

STATE PURCHASING AND GENERAL SERVICES ACT

CHAPTER 773⁷⁴

H. B. No. 1673

An Act relating to creation of the State Purchasing and General Services Commission and abolition of the State Board of Control.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. GENERAL PROVISIONS

Short title

Section 1.01. This Act may be cited as the State Purchasing and General Services Act.

Definitions

Sec. 1.02. In this Act:

(1) "Commission" means the State Purchasing and General Services Commission.

(2) "State agency" means:

(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

ARTICLE 2. ADMINISTRATIVE PROVISIONS

Commission

Sec. 2.01. The State Purchasing and General Services Commission is established.

Membership

Sec. 2.02. The commission is composed of three members appointed by the governor with the advice and consent of the senate.

Terms

Sec. 2.03. Members of the commission hold office for staggered terms of six years, with a member's term expiring on January 31 of each odd-numbered year.

⁷⁴. Vernon's Ann.Civ.St. art. 601b, §§ 1.01 to 99.05.

Officers; meetings; quorum

Sec. 2.04. (a) The governor annually shall appoint a chairman from among the commission members.

(b) The commission shall meet at least once each month. The commission may meet at other times at the call of the chairman or as provided by the commission's rules.

(c) Two members of the commission constitute a quorum.

Expenses

Sec. 2.05. A member of the commission is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission.

Executive director; staff

Sec. 2.06. (a) The commission shall employ an executive director who shall serve at the pleasure of the commission. He shall execute a bond payable to the state in such sum as the commission may deem necessary, to be approved by the commission and conditioned upon the faithful performance of his duties. Premiums for said bond also shall be payable from such appropriations for the commission as are authorized by the legislature. The executive director must have demonstrated executive and organizational ability.

(b) The executive director shall manage the affairs of the commission subject to and under the direction of the commission. All direction of the commission to the executive director shall be made at an open meeting of the commission and made a part of the minutes of the commission. A member of the commission may not grant any authority to the executive director or any other employee by power of attorney.

(c) The executive director may employ a staff necessary to administer the functions of the commission.

Application of Sunset Act

Sec. 2.07. The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless continued in existence as provided by that Act, the commission is abolished and this Act expires effective September 1, 1991.

ARTICLE 3. PURCHASING**Establishment of purchasing system**

Sec. 3.01. (a) The commission shall purchase, lease, rent, or otherwise acquire all supplies, materials, services, and equipment for all state agencies, and shall institute and maintain an effective and economical system for purchasing all such supplies, materials, services, and equipment.

(b) "Services," as used in this article, means the furnishing of skilled or unskilled labor or professional work but does not include:

(1) professional services covered by the Professional Services Procurement Act (Article 664—4, Vernon's Texas Civil Statutes);

(2) services of an employee of a state agency;

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(3) consulting services or services of a private consultant as defined by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes); or

(4) services of public utilities.

Limits of authority

Sec. 3.02. The commission's authority does not extend to purchases of supplies, materials, services, or equipment:

(1) for resale;

(2) for auxiliary enterprises;

(3) for organized activities relating to instructional departments of institutions of higher learning and similar activities of other state agencies; or

(4) from gifts or grants other than federal grants.

Purchase of motor vehicles for school districts

Sec. 3.03. The commission shall purchase all motor vehicles used for transporting school children, including buses, bus chassis, and bus bodies, tires, and tubes, for school districts participating in the Foundation School Program as provided by Subchapter F, Chapter 21, Texas Education Code.

Mental health and mental retardation community centers

Sec. 3.04. Community centers for mental health and mental retardation services that are receiving state grants-in-aid under the provisions of Article 4 of the Texas Mental Health and Mental Retardation Act may purchase drugs and medicines through the commission.

Purchases by the legislature

Sec. 3.05. Either house of the legislature, or any agency, council, or committee of the legislature, including the Legislative Budget Board, the Texas Legislative Council, the State Auditor's Office, and the Legislative Reference Library, may utilize the purchasing services of the commission for purchasing supplies, materials, services, equipment, and those items covered by Article XVI, Section 21, of the Texas Constitution.

Delegation of authority to state agencies

Sec. 3.06. The commission may delegate purchasing functions to a state agency.

Emergency purchases

Sec. 3.07. The commission shall provide for emergency purchases by a state agency and may set a monetary limit on the amount of each emergency purchase.

Purchases less than a specified monetary amount

Sec. 3.08. (a) The commission shall establish a procedure by which state agencies shall be delegated the authority to purchase supplies, materials, and equipment if the purchase is less than \$500 and shall pro-

vide in the procedure that formal competitive bidding is not required for purchases under \$100.

(b) Supplies or materials purchased under this section may not include:

(1) items for which contracts have been awarded under the contract purchase procedure, unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) any item required by statute to be purchased from a particular source; or

(3) scheduled items that have been designated for purchase by the commission.

(c) Large purchases may not be divided into small lot purchases in order to meet the specified dollar limits.

(d) Agencies making purchases under this section must attempt to obtain at least three competitive bids from sources which normally offer for sale the merchandise being purchased.

Review of specifications

Sec. 3.09. (a) The commission shall review the specifications and conditions of purchase of any supplies, materials, equipment, or services desired to be purchased.

(b) If the commission finds that specifications and conditions of a purchase request have been drawn to describe a product which is proprietary to one vendor and does not include language which permits an equivalent product to be supplied, it shall require written justification of the requested specifications or conditions, signed by the agency head or the chairman of the governing body. For an institution of higher education, the written justification may be signed by the person designated by the president or governing body as purchasing officer for the institution. The written justification shall contain the following:

(1) explanation of the need for the specifications;

(2) the reason competing products are not satisfactory; and

(3) other information requested by the commission.

(c) If a resubmission with written justification is to be required by the commission, it shall notify the requesting state agency of that fact within 10 days after the date of receipt of the purchase request.

(d) If the commission, after considering all factors, takes exception to the justifications, it shall purchase the supplies, materials, services, or equipment as requested and report the reasons for its exceptions to the agency head or the chairman of the governing body, the state auditor, the Legislative Budget Board, and the governor.

(e) The commission shall issue an invitation to bid to vendors within 20 days after the date of receipt of the written justification required.

(f) The commission shall not delay processing a purchase requisition by submitting the specifications and conditions to the systems/administrative services division of the state auditor's office for comment or recommendation prior to issuing the invitation to bid to vendors.

Purchase methods

Sec. 3.10. In purchasing supplies, materials, services, and equipment the commission may use, but is not limited to, the contract purchase procedure, the multiple award contract procedure, and the open

market purchase procedure. The commission shall have the authority to combine orders in a system of schedule purchasing, and it shall at all times try to benefit from purchasing in bulk. All purchases of and contracts for supplies, materials, services, and equipment shall, except as provided herein, be based whenever possible on competitive bids.

Contract purchase procedure

Sec. 3.11. (a) Notice. Notice inviting bids shall be published at least once in at least one newspaper of general circulation in the state and at least seven days preceding the last day set for the receipt of bids. The newspaper notice shall include a general description of the articles to be purchased, and shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(b) Bidders List. The commission shall maintain a bidders list and shall add or delete names from the list by the application and utilization of applicable standards set forth in Subsection (e) of this section. Bid invitations shall be sent only to those who have expressed a desire to bid on the particular types of items which are the subject of the bid invitation. Use of the bidders list shall not be confined to contract purchases but it may be used by the commission as it may find desirable in making any purchase.

(c) Bid Deposits. When deemed necessary bid deposits in amounts to be set by the commission shall be prescribed in the public notices and the invitation to bid. The commission shall establish and maintain records of bid deposits and their disposition with the cooperation of the state auditor, and upon the award of bids or rejection of all bids, bid deposits shall be returned to unsuccessful bidders making bid deposits. The commission may accept a bid deposit in the form of a blanket bond from any bidder.

(d) Bid Opening Procedure. Bids shall be submitted to the commission, sealed, and identified as bids on the envelope. Bids shall be opened at the time and place stated in the public notices and the invitation to bid. The state auditor or a member of his staff may be present at any bid opening. A tabulation of all bids received shall be available for public inspection under regulations to be established by the commission.

(e) Award of Contract. The commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required. Complying with the specified time limit for submission of written data, samples, or models on or before bid opening time is essential to the materiality of a bid, provided, however, that the commission shall have the authority to waive this provision if the failure to comply is beyond control of the bidder. In determining who is the lowest and best bidder, in addition to price, the commission shall consider:

- (1) the quality, availability, and adaptability of the supplies, materials, equipment, or contractual services, to the particular use required;
- (2) the number and scope of conditions attached to the bid;
- (3) the ability, capacity, and skill of the bidder to perform the contract or provide the service required;
- (4) whether the bidder can perform the contract or provide the service promptly, or within the time required, without delay or interference;
- (5) the character, responsibility, integrity, reputation, and experience of the bidder;

- (6) the quality of performance of previous contracts or services;
 - (7) the previous and existing compliance by the bidder with laws relating to the contract or service;
 - (8) any previous or existing noncompliance by the bidder with specification requirements relating to time of submission of specified data such as samples, models, drawings, certificates, or other information;
 - (9) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service; and
 - (10) the ability of the bidder to provide future maintenance, repair parts, and service for the use of the subject of the contract.
- (f) **Rejection of Bids.** If a bid is submitted in which there is a material failure to comply with the specification requirements, such bid shall be rejected and the contract awarded to the bidder submitting the lowest and best bid conforming to the specifications, provided, however, the commission shall in any event have the authority to reject all bids or parts of bids when the interest of the state will be served thereby.
- (g) **Bid Record.** When an award is made, a statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.
- (h) **Tie Bids.** In case of tie bids, quality and service being equal, the contract shall be awarded under rules and regulations to be adopted by the commission.
- (i) **Performance Bonds.** The commission may require a performance bond before entering a contract in such amount as it finds reasonable and necessary to protect the interests of the state. Any bond required under this subsection shall be conditioned that the bidder will faithfully execute the terms of the contract into which he has entered. Any bond required shall be filed with the commission and recoveries may be had thereon until it is exhausted.

Open market purchase procedure

- Sec. 3.12. (a) When the commission determines that any purchases of supplies, materials, equipment, or services may be made most effectively in the open market, such purchases may be made without newspaper advertising.
- (b) **Minimum Number of Bids.** All open market purchases shall, whenever possible, be based on at least three competitive bids, and shall be awarded to the lowest and best bidder in accordance with the standards set forth under this article.
- (c) **Notice Inviting Bids.** The commission shall solicit bids by:
- (1) direct mail request to prospective vendors; or
 - (2) telephone or telegraph.
- (d) **Recording.** The commission shall keep a record of all open market orders and bids submitted thereon, and a tabulation of the bids shall, under rules and regulations to be established by the commission, be open to public inspection; provided, they shall always be open to inspection by the state auditor or his representatives.
- (e) **Agency Review.** If a state agency requests that it be allowed to review the bids on a purchase request, the commission shall forward copies of the bids received or make the same available to the requesting agency along with the commission's recommended award. If, after review of the bids and evaluation of the quality of products offered in the bids,

the state agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification, that the award be made to the bidder determined to be the lowest and best bid. The commission shall give consideration to, but is not bound by, the agency recommendation in making the award.

(f) **Statement of Award.** A statement of the basis for placing the order with the successful bidder and the factors considered in determining the lowest and best bid shall be prepared by the purchasing division and filed with other papers relating to the transaction.

Compliance with antitrust laws

Sec. 3.13. A bidder offering to sell supplies, materials, services, or equipment to the state shall certify on each bid submitted that neither the bidder nor the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this state codified in Section 15.01, et seq., Business & Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. The attorney general shall prepare the certification statement which is to be made a part of the bid form.

Invoice

Sec. 3.14. The contractor or seller of supplies and/or services contracted for by the commission shall render an invoice to the ordering agency at the address shown on the purchase order. The invoice shall be prepared and submitted under such rules and regulations as the commission shall provide.

Invoice; check of goods or services

Sec. 3.15. (a) As soon as supplies, materials, or equipment are received by a state agency they shall be inspected by the agency to see if they correspond in every particular with those covered by the contract under which they were purchased, and if the invoice is correct, the agency shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. As soon as an invoice is received for services rendered to any state agency, the agency shall determine if such services correspond in every particular with those services contracted for and that the invoice is correct, and shall certify that such is true and transmit to the commission the original invoice and appropriate purchase voucher forms. The state agency shall complete the procedures for transmittal of the invoice and purchase voucher to the commission promptly after receipt of the supplies, materials, or equipment or performance of the services or receipt of the invoice for the supplies, materials, equipment, or services, whichever is later.

(b) If the commission finds such invoice and purchase voucher forms correct, it shall approve and transmit same to the state comptroller. The commission shall complete the procedures for transmittal of the invoice and purchase voucher to the state comptroller within eight days after receipt of the invoice and purchase voucher. The commission is not requir-

ed to process vouchers in payment of telephone service within eight days but shall process them as expeditiously as possible.

Invoice; payment

Sec. 3.16. When an invoice and purchase voucher have been approved by the agency and the commission, and have been approved by the comptroller, the comptroller shall draw a warrant upon the state treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the state agency. The comptroller shall complete the procedures for drawing the warrant within eight days after receipt of the invoice and purchase voucher.

Specifications and standards program; test and inspection program

Sec. 3.17. The commission shall have the authority to establish and maintain a specifications and standards program to coordinate the establishment and maintenance of uniform standards and specifications for materials, supplies, and equipment purchased by the commission. The commission shall enlist the cooperation of other state agencies in the establishment, maintenance, and revision of uniform standards and specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of materials, supplies, and equipment may be continuously accomplished. The commission may also establish and maintain a program of testing and inspecting to ensure that materials, supplies, services, and equipment meet specifications, and may make contracts for testing. If any state agency determines that any supplies, materials, services, or equipment received do not meet specifications, it shall promptly notify the commission in writing detailing the reasons why the supplies, materials, services, or equipment do not meet the specifications of the contract. The commission shall immediately determine whether or not the reported supplies, materials, services, or equipment meet specifications. The sole power to determine whether materials, supplies, services, and equipment meet specifications shall rest with the commission. When the commission finds that contract specifications or conditions have not been complied with, it shall take action, with the assistance of the attorney general, if necessary, against the defaulting contractor.

Usage figures

Sec. 3.18. The commission shall maintain usage figures on the consumption and use of supplies, materials, services, and equipment purchased for state agencies, institutions, boards, and commissions, and shall furnish using agencies upon request usage and consumption figures maintained. The commission is directed to cooperate with the state budget offices and the state auditor in the preparation of usage and consumption figures of supplies, materials, services, and equipment.

Conflict of interest

Sec. 3.19. No member of the commission or any employee or appointee of the commission shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies, materials, services, and equipment of any kind to any agency of the State of Texas. Neither shall any

member or employee or appointee, under penalty of dismissal, accept or receive from any person, firm, or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift, or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation, or contract for future reward or compensation from any such party.

Preference for products of retarded or handicapped persons

Sec. 3.20. The products of workshops, organizations, or corporations whose primary purpose is training and employing mentally retarded or physically handicapped persons shall be given preference if they meet state specifications as to quantity, quality, and price.

Purchase and use of paper containing recycled fibers

Sec. 3.21. The commission shall contract for paper containing the highest percent of recycled fibers for all purposes for which paper with recycled fibers may be used and to the extent that such paper is available at a reasonable price through normal commercial channels to supply the needs of the state. All agencies which purchase through the commission are directed to place orders for papers containing recycled fibers to the highest extent of their needs and to the extent that such paper is available through purchasing procedures of the commission.

Exemption of goods or services of blind persons

Sec. 3.22. The provisions of this article with respect to competitive bids are not applicable to state purchases of blind-made goods or services offered for sale to state agencies as a result of efforts made by the Texas Committee on Purchases of Blind-Made Goods and Services acting in accordance with legislation applicable to the committee if the goods or services meet state specifications as to quantity and quality and the cost is not in excess of the fair market price of like items.

Contracts with Department of Corrections

Sec. 3.23. The commission is hereby authorized to make contracts with the Texas Department of Corrections for the purchase of supplies, equipment, services, and materials for use by other state agencies.

Advance payments to state or federal agencies

Sec. 3.24. All state agencies are authorized to make advance payments to federal and other state agencies for merchandise purchased from such agencies when advance payments will expedite the delivery of the merchandise.

Contracts for printing laws

Sec. 3.25. (a) The commission shall, at the opening of each regular session of the Texas legislature, award a special contract for printing the general and special laws and resolutions to be passed by each regular or special session of the current legislature, the contract to be separate and apart from all other contracts for public printing. The general and special laws shall be printed in separate volumes upon order of the commission. The contracts for the printing shall be prepared by the commission

and shall provide such penalties as will assure the delivery of the laws within the contract time limit. The printer shall be required to begin delivery of completed books within a reasonable time after the printing is completed and binding commenced, which limit shall be set out in the call for bids made by the commission. An appropriation shall be made by the legislature to pay the cost of compiling, indexing, and printing all such laws and resolutions.

(b) There shall also be placed in the contract a stipulation requiring the printer to have the proof read and corrected before submitting such proof to the state. The comptroller shall not issue a warrant to the printer in payment for the printing of such laws and resolutions unless and until the printer, if an individual, or if a corporation, partnership, or association, the vice-president, secretary, or manager of same has made a sworn affidavit that he has complied with this section.

(c) Such laws and resolutions shall be compiled and printed under the direction of the secretary of state, who shall within 26 days, excluding Sundays, after adjournment of the legislature furnish the printer all copy therefor, the delivery of the first copy to the printer to begin as the bills are signed by the governor; provided that copy for the index shall be given to the printer within five days after the printer has furnished all page proofs of the laws to the secretary of state.

(d) The secretary of state shall distribute the printed laws of each session of the legislature as follows: (1) one copy to the governor, (2) one copy to the lieutenant governor, (3) three copies to each of the heads of all departments, (4) one copy to each of the judges of the several courts throughout the state, (5) one copy to each district and county attorney in the state, and (6) one copy to each member of the legislature.

**Prohibition of reproduction or disposition of matter printed
under public contract**

Sec. 3.26. (a) Except under contract or agreement with the state as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation, or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print, or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction, or copy of same, or plate, type, mat, cut, or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract.

(b) Any printing done under contract for any department, the legislature, or either branch thereof, any board, commission, court, officer or agent of the State of Texas, as well as any such work done directly for the state, shall for the purposes of this article be deemed to have been done for the State of Texas.

(c) With the consent of the commission and the governor, any person, firm, corporation, or association may print extra copies and sell them at a price fixed by the commission, whenever in the opinion of the commission and the governor the printed matter should be distributed in such manner for the benefit of the public. Any such contract for the printing and sale of such extra copies shall be approved by the attorney general.

(d) Any person, firm, corporation, or association of persons violating any provision of this section shall be guilty of a misdemeanor and upon

conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, and in the event the violation is by a natural person or the agent or employee of a person, corporation, firm, or association, the punishment may be by jail sentence not to exceed 30 days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also.

Surplus war materials

Sec. 3.27. The commission is authorized and directed to purchase for any county or any other political subdivision of this state such surplus war materials or surplus goods, merchandise, equipment, or other wares from the federal government or its agencies as may be offered for sale by them, provided the county or other political subdivision shall request the commission to make such purchase, and provided it shall deposit with the commission sufficient funds to cover payment therefor.

Preference to Texas and United States products

Sec. 3.28. (a) The commission and all state agencies making purchases of supplies, materials, or equipment shall give preference to those produced in Texas or offered by Texas citizens, the cost to the state and quality being substantially equal.

(b) If supplies, materials, or equipment produced in Texas or offered by Texas citizens are not substantially equal in cost and quality, then supplies, materials, or equipment produced in other states of the United States of America shall be given preference over foreign-made products, the cost to the state and quality being substantially equal.

Purchase of passenger vehicles

Sec. 3.29. A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 145 SAE horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

ARTICLE 4. PUBLIC BUILDINGS AND GROUNDS

Custodianship of state property

Sec. 4.01. (a) The commission shall have charge and control of all public buildings, grounds and property of the state, and is the custodian of all public personal property, and is responsible for the proper care and protection of such property from damage, intrusion, or improper usage. The commission is expressly directed to take any steps necessary to protect public buildings against any existing or threatened fire hazards. The commission is authorized to provide for the allocation of space in any of the public buildings to the departments of the state government for the uses authorized by law, and is authorized to make any repairs to any such buildings or parts thereof necessary to the serviceable accommodation of the uses to which such buildings or space therein may be allotted.

(b) The allocation of any space affecting the quarters of either house of the legislature must have the approval of the speaker of the house of representatives or the lieutenant governor, the approval being for the quarters allocated to the particular house affected.

(c) The provisions of Subsection (a) of this section pertaining to charge and control of public buildings and grounds do not apply to buildings and grounds of:

(1) institutions of higher education, as defined by Section 61.003, Texas Education Code, as amended;

(2) state agencies to which control has been specifically committed by law; and

(3) state agencies that have demonstrated ability and competence to maintain and control their buildings and grounds and to which the commission delegates that authority.

Lease of public grounds

Sec. 4.02. (a) All public grounds belonging to the State of Texas under the charge and control of the commission may be leased for agricultural or commercial purposes. Lease proposals shall be advertised once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or the nearest daily paper thereto, and the other in some paper with statewide circulation. Each lease shall be subject to the approval of the attorney general of Texas, both as to substance and as to form. The money derived from the lease of such property, less the expense for advertising and leasing, shall be deposited in the state treasury to the credit of the General Revenue Fund except that if land leased belongs to any eleemosynary institution, that money must be deposited to the credit of said institution in the same manner that the special fund is now deposited or may hereafter be ordered deposited by the legislature.

(b) The commission shall adopt proper forms and regulations, rules, and contracts, as will, in its best judgment, protect the interest of the state. The commission may reject any and all bids.

Charge of capitol

Sec. 4.03. The commission during the recess of the legislature shall have charge and control of the halls, chambers, and committee rooms of the state capitol building except as hereinafter provided. Before the assembling of each session of the legislature, the commission shall prepare the different rooms for the use of the legislature.

Use of rooms in capitol for private purposes

Sec. 4.04. No room, apartment, or office in the state capitol building shall be used at any time by any person as a bedroom or for any private purposes whatever. This section shall not apply to the offices and living quarters occupied by the lieutenant governor and the speaker of the house of representatives.

Inspection of state property

Sec. 4.05. The commission shall frequently inspect all the public buildings and property of the state at the capitol, and all other buildings

and property of the state at such regular intervals as may be necessary to keep constantly informed of the condition of the same.

Repair and improvement of state buildings

Sec. 4.06. When needed improvements or repairs of buildings and offices are called to the attention of the commission by the heads of departments or offices, the commission shall provide for such repairs or improvements, and they shall be made under its direction.

Maintenance of sewers and utility conduits

Sec. 4.07. The commission shall give special attention to the effective maintenance of sewers and utility conduits.

Plans of public buildings

Sec. 4.08. The commission shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereon under its charge showing the exact location of all water, gas, and sewerage pipes and electrical wiring.

Report about improvements and repairs

Sec. 4.09. The commission shall biennially on December 1st make a report to the governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs.

State Cemetery

Sec. 4.10. (a) The commission shall control, superintend, and beautify the grounds of the State Cemetery and shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. The commission shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried.

(b) The persons eligible for burial in the State Cemetery are as follows:

- (1) present and former members of the Texas Legislature;
- (2) present and former elective state officials;
- (3) present and former state officials who have been appointed by the governor and confirmed by the senate;
- (4) persons specified by a governor's proclamation; and
- (5) persons specified in a concurrent resolution adopted by the legislature.

(c) Grave spaces shall be allotted for a person eligible for burial and for his or her spouse, together with his or her unmarried child or children, which child or children shall be buried alongside his, her, or their parent or parents, provided that such child on the effective date of this Act or at the time of his or her death is a resident in any state eleemosynary institution. Children other than those hereinabove made eligible for burial may not be included. The size of a grave plot may not be longer than eight feet nor wider than five feet times the number of per-

sons of one family authorized hereunder to be buried alongside one another.

(d) No monument or statue may be erected that is taller than any existing monument or statue in the State Cemetery on the effective date of this Act.

(e) No trees, shrubs, or flowers may be planted in the State Cemetery without written permission from the commission.

(f) Burial of persons on state property may take place only in the State Cemetery or in a cemetery maintained by a state eleemosynary institution, and no other state property, including the capitol grounds, may be used as an interment site.

(g) Allotment and location of the necessary number of grave plots authorized shall be made by the commission upon application of the person primarily eligible hereunder or by his or her spouse, or by the executor or administrator of his or her estate.

French Embassy

Sec. 4.11. The property known as the French Embassy is set aside for the uses and purposes of the Daughters of the Republic of Texas and they are authorized to take full charge of said building and use it as they may see proper. The French Embassy shall be the property of the state, and the title of said property shall remain in custody of the commission.

Protection of state buildings and grounds; regulation of parking

Sec. 4.12. (a) It shall be unlawful for any person to trespass upon the grass plots or flowerbeds, or to damage or deface any of the buildings, or cut down, deface, mutilate, or otherwise injure any of the statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds or commit any other trespass upon any property of the state, real or personal, located on the grounds of the state capitol, the governor's mansion, or other property owned by the State of Texas known as the capitol complex, in the area bounded on the south by Eleventh Street, on the north by Nineteenth Street, on the west by Lavaca Street, and on the east by Trinity Street in the City of Austin; or on state properties located on Block No. 109, Block No. 122, Block No. 123, and Block No. 124 in the original city of Austin; or on the State Cemetery grounds bounded by Seventh Street, Comal Street, Eleventh Street and Navasota Street in the city of Austin; or on the Board of Control warehouse and storage area bounded by First Street, Trinity Street, Waller Creek, and the alley in Block No. 183 in the city of Austin. The performance of construction, landscaping, and gardening work authorized by the legislature or the commission shall not be construed to be prohibited under the provisions of this Act.

(b) It is an offense to park a vehicle in a place other than a space marked and designated for parking by the commission or to block or impede traffic on the driveways of property owned or leased by the state in the area described in Subsection (a) of this section. The commission may regulate the flow and direction of traffic in the capitol complex and may erect the structures necessary to implement this authority.

(c)(1) When the legislature is in session, the commission shall assign and mark, for unrestricted use by members and administrative staff of the legislature, the reserved parking spaces in the capitol complex requested

by the respective houses of the legislature. A request for parking spaces reserved pursuant to this subsection shall be limited to spaces in the capitol driveways and the additional spaces in state parking lots proximately located to the capitol.

(2) When the legislature is not in session, the commission shall, at the request of the respective legislative bodies, assign and mark the spaces requested for use by members and administrative staff of the legislature, in the areas described in Subsection (c)(1) of this section.

(3) The commission shall assign and mark reserved parking spaces on the capitol driveways for the governor, lieutenant governor, speaker of the house, and secretary of state for their unrestricted use.

(4) The commission may assign parking spaces to elected state officials and appointed heads of state agencies who occupy space in state buildings located within the bounds set forth in Subsection (a) of this section.

(5) If spaces are available, the commission may assign parking spaces to handicapped state employees and other state employees of state agencies occupying space in state buildings located in the area described in Subsection (a) of this section.

(6) The commission may designate and mark parking spaces for state-owned vehicles and visitor and business parking within the bounds set forth in Subsection (a) of this section.

(7) The commission may establish and collect a reasonable monthly parking charge for each assigned parking space within the bounds set forth in Subsection (a) of this section, except those parking spaces assigned to the respective houses of the legislature on the capitol driveways.

(8) A person who parks an unauthorized vehicle in a space assigned under the provisions of this section commits an offense.

(9) The provisions of this subsection do not apply to the property or the parking facility under the management and control of the Texas Employment Commission and located within the bounds set forth in Subsection (a) of this section.

(d) The commission is hereby authorized to request the State Department of Highways and Public Transportation to assist it in the marking and designation of such parking spaces as the commission shall deem necessary and to maintain the painting of lines and curb markings and furnish such directional or informational signs as the commission shall deem necessary in the area described in Subsection (a) of this section. The Department of Public Safety shall provide advice and assistance to the commission when requested and shall at all times have at least one commissioned officer assigned to duty in the capitol area.

(e) It shall be unlawful to operate a motor vehicle upon any property owned by the State of Texas within the bounds set forth in Subsection (a) of this section at a speed in excess of 15 miles per hour. All laws regulating traffic upon highways and streets shall apply to the operation of motor vehicles within the prescribed areas, except as modified hereby.

(f) All of the general and criminal laws of the state are declared to be in full force and effect within the areas regulated by this section.

(g) The commission is authorized to employ security officers for the purpose of carrying out the provisions of this section and may commission such security officers as it deems necessary as peace officers. When so commissioned, said officers are hereby vested with all the powers, priv-

illeges, and immunities of peace officers; provided, that each security officer shall take and file the oath required of peace officers and shall execute and file with the commission a good and sufficient bond in the sum of \$1,000 payable to the governor of this state and his successors in office with two or more good and sufficient sureties conditioned that he will fairly and faithfully perform all of the duties as may be required of him by law, and that he will fairly and impartially enforce the law of this state and that he will pay over any and all money, or turn over any and all property, to the proper person legally entitled to the same, that may come into his possession by virtue of such office. Said bond shall not be void for the first recovery but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. It shall be unlawful and constitute a misdemeanor punishable as provided in this section for any person or persons to impersonate any of said officers.

(h) The powers and duties conferred on the commission by this section may, at the request of a state agency, be exercised on any property owned or leased by the state. The cost of any service performed by the commission under this subsection, for a requesting agency, when performed outside the areas described in Subsection (a) of this section, shall be reimbursed to the commission by that agency pursuant to a contract executed in accordance with The Interagency Cooperation Act (Article 4413(22), Vernon's Texas Civil Statutes).

(i) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$200. The penalties for violation of any of the other criminal laws of the state shall be as now provided by law.

(j) In connection with traffic and parking violations only, the officers authorized to enforce the provisions of this section shall have the authority to issue and use traffic tickets and summons of the type now used by the city of Austin and/or the Texas Highway Patrol with such changes as are necessitated thereby to be prepared and furnished by the commission. Upon the issuance of any such traffic ticket or summons the same procedures shall be followed as now prevail in connection with the use of parking and traffic violation tickets by the city of Austin and the Texas Highway Patrol. Nothing herein shall restrict the application and use of regular arrest warrants.

(k) The primary responsibility for enforcing the provisions of this section shall be with the commission, which shall have authority to promulgate rules and regulations not inconsistent with this section or other provisions of law as it may deem necessary to carry out the provisions of this section. Whenever the commission shall have promulgated such a rule or regulation and has posted signs in any of the regulated areas giving notice thereof, it shall be unlawful for any person to violate any of the provisions of such signs and shall constitute a misdemeanor punishable as provided in this section.

(l) The judge of the municipal court and/or any justice of the peace in Austin are each hereby separately vested with all jurisdiction necessary to hear, try, and determine criminal cases involving violations hereof where punishment does not exceed a fine of \$200.

(m) Nothing herein contained shall be construed to abridge the authority of the commission to grant permission to use the capitol grounds and

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any grounds adjacent to any state building for such use as may be provided by preexisting law.

Pass keys to rooms in the capitol

Sec. 4.13. Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the state capitol, unless authorized to do so, shall be fined not exceeding \$100.

Consent of legislature required for construction

Sec. 4.14. (a) It shall be unlawful, without the prior express consent of the legislature, for any officer of this state or any employee thereof or any other person to construct, build, erect, or maintain any building, structure, memorial, monument, statue, concession, or any other structure including creation of parking areas or the laying of additional paving on any of the grounds that surrounded the state capitol on January 1, 1955, and which grounds were then bounded by Eleventh, Brazos, Thirteenth and Colorado Streets, in the city of Austin, Texas, whether such land lay inside or outside the fence enclosing part of the grounds; provided, however, that paved access and underground utility installations may be constructed and maintained.

(b) Any officer or employee of this state, or other person violating Subsection (a) of this section, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or imprisoned in the county jail of Travis County for a period of time not to exceed one year, or by both such fine and imprisonment.

(c) Any officer of this state who is subject to removal from office by means of impeachment shall be subject to such removal for violation of Subsection (a) of this section and any other officer or any employee of the state who shall violate Subsection (a) of this section shall be dismissed immediately from any employment by the state.

ARTICLE 5. BUILDING CONSTRUCTION ADMINISTRATION

Acquisition, construction, etc.

Sec. 5.01. (a) Under such terms and conditions as may be provided by law, the commission may acquire necessary real and personal property, modernize, remodel, build, and equip buildings for state purposes, and make contracts necessary to carry out and effectuate the purposes herein mentioned in keeping with appropriations authorized by the legislature. The commission shall not sell or dispose of any real property of the state except by specific authority from the legislature.

(b) In acquiring real property for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Contracts; analyses

Sec. 5.02. (a) The commission is authorized to take any action and enter into any contracts to obtain sites which it deems necessary in order to provide for the orderly future development of the state building program insofar as appropriations permit.

(b) The commission may call upon the State Department of Highways and Public Transportation to make appropriate tests and analyses of the natural materials at the site of each building constructed under the terms of this article to insure that foundations of said buildings will be adequate for the life of the buildings.

Eminent domain

Sec. 5.03. The commission shall have and may exercise the power of eminent domain under the general laws to obtain sites for buildings.

Title, initial occupants

Sec. 5.04. The commission shall obtain title for the state and retain control of the real property acquired for sites and of the buildings located thereon. The initial occupants of buildings shall be those state agencies determined by the commission or the legislature. This section shall apply to all new state buildings constructed heretofore or that may be constructed hereafter in Austin by the commission.

Assistance from agencies

Sec. 5.05. The commission shall have the authority to call on any department of state government to assist it in carrying out the provisions of this article.

Monuments, memorials

Sec. 5.06. Monuments or memorials for the Texas heroes of the Confederate States of America and the Texas War for Independence, or to commemorate any other event or person of historical significance to Texans and the State of Texas may be erected on land owned or acquired by the state or, if suitable contracts can be made for permanent preservation of such monuments or memorials, on private property or on land owned by the federal government or by other states. The locating and marking of graves of such Texans is hereby authorized. The commission is further authorized to maintain and shall be responsible for the continuing maintenance of the monuments and memorials erected by the State of Texas to commemorate the Centenary of Texas Independence. Before erection of any new monument or memorial the commission shall obtain the approval of the Texas Historical Commission as to the form, dimensions, substance of, and inscriptions or illustrations upon such monuments or memorials.

Contracts with Historical Commission

Sec. 5.07. The commission is authorized to negotiate and contract with the Texas Historical Commission for the purpose of assisting and advising the commission with regard to the proper memorials and monuments

to be erected, repaired, and removed to new locations, the selection of sites therefor, and the locating and marking of graves.

Acquisition of historic buildings, etc.

Sec. 5.08. The commission is authorized to acquire by gift, devise, purchase, or by its general power of eminent domain, any lands on which are situated historic buildings, sites, or landmarks of statewide historical significance associated with historic events or personalities, or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological sites, sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical feature, within the limits of the State of Texas. The right of eminent domain conferred above as relating to historical sites, buildings, and structures shall not be exercised except upon a proper showing that it is necessary to prevent destruction or deterioration of the historical site, building, or structure. The commission is authorized to request from the Texas Historical Commission a certification or authentication of the worthiness of preservation of the features listed above.

Archives

Sec. 5.09. The commission may, in its discretion, provide for the storage and display of the archives of Texas.

Construction in other cities

Sec. 5.10. (a) The commission is authorized and empowered to select and purchase sites in any of the cities of Texas on which to construct state office buildings and adjoining parking lots where such are deemed necessary to house state departments and agencies in said cities, and is further authorized and empowered to plan, construct, and initially equip state office buildings together with adjoining parking space on each such site selected and purchased.

(b) The commission is further authorized and empowered to enter into lease agreements with departments, commissions, boards, agencies, and other instrumentalities of the State of Texas, political subdivisions of the State of Texas, and the federal government or its instrumentalities concerning the space in the office building which is the subject of this article. The commission is specifically denied the power to lease space in said building to individuals, private corporations or associations, partnerships, or any other private interests.

Grant of easements and rights-of-way

Sec. 5.11. The commission is authorized and empowered to grant such permanent and temporary easements and rights-of-way over and on lands of any state agency on any project administered by the commission as shall be necessary to insure the efficient and expeditious construction, improvement, renovation, use, and operation of such state agency project building or facility.

Definitions

Sec. 5.12. The following terms whenever used or referred to in this article shall have the following meanings, except in those instances where the context clearly indicates otherwise:

(1) "Using agency" means any instrumentality of the state which shall occupy and make use of a state-owned or state-leased building, and for the

purpose of this article the commission shall be considered as the using agency for the state capitol, the governor's mansion and for all other state-owned buildings maintained by the commission.

(2) "Commission" means the State Purchasing and General Services Commission.

(3) "Project" means any building construction project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, which shall be financed in whole or in part by specific appropriation, bond issue or federal funds. The term "project" shall include the construction of any building or any structure or any facility or utility appurtenant thereto, including original equipment and original furnishings thereof, and of any addition to, alteration, rehabilitation, or repair of any existing building or any structure, or any facility or utility appurtenant thereto.

(4) "Project analysis" refers to work done prior to legislative appropriation for a project for the purpose of developing a reliable estimate of the cost of a project to be requested of the legislature.

(5) "Cost of a project" includes, but shall not be limited to, the cost of all real estate, properties, rights and easements acquired, utility services, site development, the cost of construction and the initial furnishing and equipment thereof, all architectural and engineering and legal expenses, the cost of surveys and plans and specifications, and such other expenses, including those incurred by the commission, as are necessary or incident to determining the feasibility or practicability of any project.

(6) "Construction" means and includes acquisition, construction, and reconstruction.

(7) "Rehabilitation" means and includes renewal, restoration, extension, enlargement, and improvement.

(8) "Equipment" and "furnishings" mean and include any equipment and furnishings whatsoever as may be necessary and required for the use of a project.

(9) "Architect/engineer" means a person registered as an architect pursuant to Chapter 478, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 249a of Vernon's Texas Civil Statutes), and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, Regular Session, 1937, as amended (compiled as Article 3271a of Vernon's Texas Civil Statutes), employed to provide professional architectural or engineering services and having overall responsibility for the design of a project. The term "architect/engineer" standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the commission on a salary basis or an architect/engineer in private practice retained for a specific project under a contractual agreement with the commission. The term "private architect/engineer" shall specifically and exclusively refer to a registered architect or a registered engineer in private practice retained for a specific project under a contractual agreement with the commission.

(10) "Stage construction" means the construction of a project in phases, each phase resulting in one or more buildings or structures which individually or together shall be capable of use regardless of whether subsequent phases of the project are authorized or not.

Application of article

Sec. 5.13. (a) This article shall apply to all building construction projects as herein defined which may be undertaken by the state, with the following exceptions:

- (1) all projects constructed by and for the State Department of Highways and Public Transportation;
- (2) all projects constructed by and for state institutions of higher education;
- (3) all projects constructed by and for the Texas Department of Corrections;
- (4) pens, sheds, and ancillary buildings constructed by and for the Texas Department of Agriculture for the processing of livestock prior to export;
- (5) all projects of repair and rehabilitation, except major renovations, of buildings and grounds on the commission inventory;
- (6) all projects constructed by the Parks and Wildlife Department; and
- (7) repair and rehabilitation projects of any other using agency, provided all labor for such projects is provided by the regular maintenance forces of the using agency under specific legislative authorization, and provided further, that such projects do not require the advance preparation of working plans and/or drawings.

(b) Nothing in this section shall be construed as prohibiting the commission from undertaking a project excluded by this section under an interagency agreement originated by the appropriate using agency, and provided further, that nothing in this section shall be construed as exempting any agency or institution from the requirements of Section 5.31 of this article.

(c) In addition to the exclusions enumerated in this section, the commission may, by regulation, exclude repair and rehabilitation projects involving the use of contract labor, provided such projects do not require the advance preparation of working plans and drawings.

Additional exclusions

Sec. 5.14. In addition to the projects excluded by Section 5.13 of this article, it is specifically provided that nothing in this article shall apply to:

- (1) projects constructed by or under the supervision of any public authorities created by the laws of this state; or
- (2) state-aided local government projects of any character whatsoever.

Administration

Sec. 5.15. (a) The commission is designated as the administering agency and shall exercise the powers and duties conferred upon it by this article. The commission shall be the coordinating authority for the construction of any multiagency state office buildings which the legislature may authorize.

(b) The commission shall, subject to the provisions of the appropriations act and such general laws as may apply, employ professional, technical, and clerical personnel.

(c) The commission shall appoint a director of planning and construction who shall be a registered architect or a registered professional engineer and shall have proven administrative ability and experience in the fields of building design and construction. The director shall be the full-time executive and administrative officer of the commission which shall delegate to him such power, authority, and duties as it may deem necessary and proper.

(d) The commission may assign a qualified professional employee to any using agency where the volume of construction projects is such that the commission and the using agency agree that full-time coordination between the commission and the using agency is desirable. The commission and the using agency shall mutually agree upon the qualifications and duties of such assigned employees and the salary and related expenses of such assigned employees shall be charged against the projects of the using agency to which they are assigned. Such assignments shall be terminated whenever in the opinion of the commission they are no longer required.

(e) The commission may promulgate rules and regulations necessary to implement the powers, duties, and responsibilities imposed upon it by this article. The rules and regulations shall be binding on all state agencies upon being filed with the secretary of state. The commission shall prepare and publish a manual to assist using agencies in complying with the provisions of this article and the rules and regulations of the commission. Copies of the manual shall be distributed to all using agencies and shall be available to architects, engineers, contractors, and others who may need and request a copy of it.

(f) Legal representation of the commission shall be performed by the Attorney General of Texas. This provision shall not restrict the attorney general from employing special assistants to assist in the performance of duties arising by virtue of the provisions of this article in those instances where the attorney general deems such employment necessary.

(g) Venue of all suits for any breach of contract entered into pursuant to the provisions of this article shall be in Travis County, Texas.

(h) The commission may waive, suspend, or modify any provision of this article which shall be in conflict with any federal statute or any rule, regulation, or administrative procedure of any federal agency where such waiver, suspension, or modification shall be essential to the receipt of federal funds for any project. In the case of any project wholly financed from federal funds, any standards required by the enabling federal statute or required by the rules and regulations of the administering federal agency shall be controlling.

Project analysis

Sec. 5.16. (a) Each using agency of the state which shall desire any project, other than those specifically excluded by Sections 5.13 and 5.14 of this article, shall prepare and submit to the commission a general description of the project. The commission shall cause all such projects to be studied and shall initiate the preparation of a project analysis for all new construction projects and for all other projects where, in the opinion of the commission, the cost of preparing a project analysis is justified.

(b) A project analysis may be prepared by a private architect/engineer employed by the commission or, at its discretion, by the commis-

sion's staff. A private architect/engineer employed for the purpose of preparing a project analysis shall be selected by the method set forth in Section 5.22 of this article and shall be paid from the State Building Construction Planning Fund established by Section 5.24 of this article. The contract to prepare a project analysis shall specify that the analysis shall become the property of the commission.

(c) A project analysis shall consist of (1) a complete description of the facility or project together with a justification of such facility or project prepared by the using agency, (2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic future growth, (3) a description of the proposed facility prepared by an architect/engineer and including schematic plans and outline specifications describing the type of construction and probable materials to be used, sufficient to establish the general scope and quality of construction, (4) an estimate of the probable cost of construction, (5) a description of the proposed site of the project and an estimate of the cost of site preparation, and (6) an overall estimate of the cost of the project. All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Throughout the preparation of the project analysis, the commission and any private architect/engineer employed by the commission shall work closely and cooperatively with the using agency to the end that the project analysis shall fully reflect the needs of the using agency.

The using agency shall use the cost of the project as determined by such project analysis as the basis of its request to the budget offices of this state.

(d) In the case of projects where, in the opinion of the commission, the cost of a project analysis is not justified or required, the commission shall, in cooperation with the using agency, develop a realistic estimate of the cost of the project. When necessary, the commission shall arrange for an on-site inspection and analysis of the proposed project by a member of its staff. The using agency shall be informed of the cost estimate so developed and shall use such estimate as the basis of its request to the budget offices of this state.

(e) On or before a date to be specified by the budget agencies of this state in each year immediately preceding a regular session of the legislature, the commission shall submit to the budget agencies a report listing all projects requested pursuant to this section. The list shall contain (1) a brief and specific justification of each project as prepared by the using agency, (2) a summary of the project analysis where one was made or a statement briefly describing the cost-estimating method used for projects for which a project analysis was not made, (3) a project cost estimate developed in accordance with the provisions of this section, with sufficient detail given to afford the budget agencies, the governor, and the legislature the widest possible latitude in developing policy in regard to each such project request, (4) an estimate, prepared by the commission with the cooperation of the using agency and with the cooperation of the private architect/engineer employed, of the annual cost of maintaining the completed project including the estimated cost of utility services, and (5) an estimate, prepared by the using agency, of the annual cost of staffing and operating the completed project exclusive of maintenance cost. Where appropriate, the commission, with the approval of the using agency,

may indicate the feasibility of stage construction of a requested project and may indicate the degree to which funds would be required in the next biennium if the project were undertaken in stages.

(f) Whenever any using agency shall request three or more projects, it shall designate its priority rating for each project. The budget agencies shall, with the cooperation of the commission, develop detailed instructions to implement this priority system and the commission's report shall show the designated priority of each project to which a priority rating has been assigned.

Legislative authorizations and appropriations

Sec. 5.17. (a) The legislature shall authorize and appropriate for such projects as it may approve. Project appropriations shall be made directly to the using agency except in those instances where the project is to be constructed by the commission in which case the appropriation shall be made to the commission.

(b) The appropriation of funds by the legislature for the construction of a project shall be construed by the commission and the using agency as an expression of legislative intent that the project be completed within the limits of the funds actually appropriated. In the event that the funds appropriated are less than the amount originally requested or if, for any reason, the funds appropriated are less than the amount required for the project as originally submitted to the budget agencies, the commission and the using agency shall jointly confer on ways and means whereby the project cost can be brought within the bounds of the funds appropriated and shall, in such conferences, make every effort to comply with legislative intent with regard to modification of the project from the original request. In the event that it is impossible to modify the project to bring the cost within the amount appropriated, the commission shall notify the using agency that it considers such project as cancelled.

When authorized by the act appropriating funds for a project, the using agency may appeal the decision of the commission to the governor by submitting a request that the project be undertaken as stage construction or that the funds available for such project be supplemented by the transfer of funds appropriated to the same using agency for other projects of equal or lower priority or from the unused contingency reserves of any project of the same using agency. The governor shall, after obtaining the advice of the Legislative Budget Board, rule on such request and if the ruling shall favor the agency, the commission shall proceed with the project.

(c) The legislature may, by specific provision, provide for stage construction of a project and in such event the commission shall proceed with the project through the specifically authorized stage.

Fine arts projects

Sec. 5.18. (a) Any using agency which requests a project analysis by the commission, if the cost of the project is estimated to exceed \$250,000, may stipulate that a percentage of the original project cost estimate not to exceed one percent shall be used for fine arts projects at or near the site of the building construction project, such as murals, fountains, mosaics, and other aesthetic improvements.

(b) If the expenditures for fine arts are authorized and appropriated by the legislature, the commission shall consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the appropriation to be used for fine arts projects.

(c) It is the intent of the legislature that emphasis be placed on works by living Texas artists whenever feasible. Consideration shall be given to artists of all ethnic origins.

(d) Nothing in this section is intended to limit, restrict, or otherwise prohibit the commission from including expenditures for fine arts in its original project cost estimate.

Fine arts projects exempt agencies

Sec. 5.19. (a) Any using agency exempt under Section 5.13 of this article and any county, city, or other political subdivision of this state undertaking a public construction project estimated to cost in excess of \$250,000 may designate that a percentage not to exceed one percent of the cost of a public construction project shall be used for fine arts projects at or near the site of the construction project.

(b) The agency or the governing body of a political subdivision may consult and cooperate with the Texas Commission on the Arts and Humanities for advice in determining how to utilize the portion of the cost set aside for fine arts purposes.

(c) The Texas Commission on the Arts and Humanities shall place emphasis on works by living Texas artists whenever feasible, and when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

Preliminary plans, working plans; specifications

Sec. 5.20. (a) Preliminary plans and outline specifications and working plans and specifications for all projects shall be prepared either by a private architect/engineer selected and appointed by the commission in accordance with Section 5.22 of this article, or by the professional staff of the commission, provided, however, that a private architect/engineer shall be appointed for any new construction project estimated to cost in excess of \$100,000 and for any new construction project for which the using agency requests that a private architect/engineer be selected and appointed. In either case, plans and specifications shall be approved by the commission, and shall not be accepted or used by the using agency without such approval. The commission shall see that plans and specifications (1) are clear and complete; (2) permit execution of the project with appropriate economy and efficiency; and (3) conform with the requirements set forth in the project analysis previously prepared.

(b) The commission shall appoint a design advisory panel to advise the commission and the using agency on the design concept and aesthetic merits of plans submitted by an architect/engineer, provided, however, that the final decision on such matters shall rest with the commission. The design advisory panel shall consist of five persons, two of whom shall be selected from a list of nominees submitted by the Texas Society of Architects, two of whom (one a structural engineer and the other a mechanical-electrical engineer) shall be selected from a list of nominees

submitted by the Texas Society of Professional Engineers, and one of whom shall be neither an architect nor an engineer and who shall serve as chairman of the panel. Members of the panel shall serve for two years and shall be eligible for reappointment and the commission shall promulgate regulations to provide for an orderly rotation of membership which may specify a shorter term of office for the original appointees. The members of the panel shall serve without compensation, but may be reimbursed for their necessary and actual expenses out of the appropriations to the commission. No member of the panel shall, during the period of his service, advise on any project in which he is employed, retained, or in any manner financially interested. The panel shall have no responsibility for reviewing the plans and specifications other than to the extent set forth in this subsection.

(c) Following final approval of the working plans and specifications and their acceptance by the using agency, the commission shall cause to be advertised in not less than two newspapers of general circulation for bids or proposals for performance of the construction and related work on the project. Subject to the applicable provisions of other law respecting the award of state contracts, the contract or contracts shall be awarded to the qualified bidder making the lowest and best bid; but no contract shall be awarded for a sum in excess of the amount which the comptroller shall certify to be available for such project. The commission shall have the right to reject any and all bids.

(d) Before a contract is awarded for the major repair or renovation of a state structure which has been designated by the Texas Historical Commission as a Recorded Texas Historic Landmark, the commission shall forward to the Texas Historical Commission a copy of the bids received and an evaluation of the qualifications of the bidders. The Texas Historical Commission shall review the bids and qualifications of the bidders and recommend to the commission the bidder to which the award should be made. Based on the recommendation of the Texas Historical Commission, the commission may award the contract to a bidder other than the lowest bidder.

(e) Upon notice and on itemized statements by the commission:

(1) the comptroller shall transfer from each project appropriation to the State Building Construction Planning Fund created by Section 5.24 of this article an amount certified by the commission as sufficient to reimburse the planning fund for prior expenditures on behalf of the project; and

(2) the comptroller shall reserve from each project appropriation an amount estimated by the commission to be sufficient to cover contingencies over and above all amounts obligated by contract or otherwise, for planning, engineering, and architectural work, site acquisition and development, and construction, equipment, and furnishings contracts. The amount so reserved shall be used only upon the following conditions:

(A) that the architect/engineer or the contractor recommend and justify the proposed contingency expenditures by submitting a change order request;

(B) that the proposed change order request be approved by the architect/engineer;

(C) that the proposed change order request be approved by the using agency which shall make formal request for the allocation of funds from the contingency reserve; and

(D) that the director of planning and construction shall investigate the nature of the change order and concur in the necessity of the proposed expenditure or refuse same within 15 days after receiving the request.

In the event the director shall refuse to concur in a proposed contingency expenditure, the using agency may appeal to the commission and the findings of the commission shall be final. The commission shall promulgate regulations setting forth the procedures for such appeals.

If an approved change order shall result in a reduction of construction cost, the contingency reserve shall be increased by the amount of such reduction.

(f) The comptroller of public accounts shall issue warrants in payment of progress payments as well as final payments on construction under this article upon the written approval of the commission.

(g) Any equipment and furnishings not constructed or installed under the construction contract or contracts shall be acquired through regular purchasing channels of the state.

Project construction inspection

Sec. 5.21. The commission shall be responsible for protecting the interests of the state during the actual construction of each project covered by the provisions of this article. Construction inspection shall fall into three categories: detailed inspection, general inspection, and professional inspection, as defined and provided for in this section.

(1) Detailed inspection shall mean the close, technical, on-site examination of the materials, structure, and equipment, and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices by one or more full-time personnel at the project site. The commission shall be the sole judge of when detailed inspection is required and shall base its decision on the size and complexity of the project.

The full cost of detailed inspection shall be a charge against the project.

Detailed inspection shall be exercised by a project construction inspector who shall be appointed by the architect/engineer with the approval of the commission.

The project construction inspector shall:

(A) become thoroughly conversant with the drawings, specifications, details, and general conditions for executing the work;

(B) keep such records of the work as the architect/engineer and the commission may specify and require and make such reports to the architect/engineer with copies to the commission and the using agency as the architect/engineer and the commission may specify and require and maintain copies of these records and reports at the site of construction together with the plans, specifications, shop drawings, change orders, and correspondence dealing with the project;

(C) endeavor to see that the requirements of the contract documents are being carried out by the contractor;

(D) endeavor to see that all authorized changes are properly incorporated in the work and that no changes are made unless properly authorized;

(E) notify the architect/engineer if conditions encountered at the project are at variance with the contract documents and comply with the directives of the architect/engineer in endeavoring to correct these conditions;

(F) review shop drawings in relation to their adaptability to job conditions and advise the architect/engineer in respect thereto;

(G) endeavor to see that materials and equipment furnished are in accordance with the specifications;

(H) see that records are kept, on construction plans, of the principal elements of mechanical and electrical systems;

(I) see that accurate records are kept of all underground utility installations (including existing installations uncovered in the process of construction) at the project site so that the information may be recorded on site plans or drawings which may be established and maintained by the commission and/or the using agency;

(J) keep a daily written log of all significant happenings on the job, the log to include the number of workers that worked that particular day and weather conditions that existed during the day;

(K) observe and give prompt written notice to the construction contractor's representative and the architect/engineer of any noncompliance on the part of the contractor's representative with any contract documents and notify the architect/engineer and the commission of any failure to take corrective measures promptly;

(L) initiate, attend, and participate in progress meetings and inspections with the contractor;

(M) review every contractor's invoice against the value of partially completed or completed work and the materials stored at the project site prior to its being forwarded to the architect/engineer and promptly notify the architect/engineer of any discrepancy between his review of the work and the invoice; and

(N) be responsible to the architect/engineer for the proper administration of the duties enumerated herein and comply with other instructions and assignments of the architect/engineer.

(2) General inspection shall mean the examination and inspection of the project at periodic intervals by employees of the commission. On projects where a project construction inspector is employed by an architect/engineer, the general inspector shall work with and through the project construction inspector and the architect/engineer. On all other projects, the general inspector shall work with and through the architect/engineer and shall exercise such detailed inspection functions as the commission may require. The cost of general inspection shall be a charge against the project.

(3) Professional inspection shall mean the periodic examination of all elements of the project to reasonably insure that these meet the performance and design features and the technical and functional requirements of the contract documents. Professional inspection shall be exercised by the architect/engineer or his authorized representative who shall:

(A) assist the commission in obtaining proposals from contractors and in awarding and preparing construction contracts, be responsible for the

interpretation of the contract documents and any changes made thereto, and provide such interpretation of the plans and specifications as may be required during the construction phase;

(B) check and approve samples, schedules, shop drawings, and other submissions only for conformance with the design concept of the project and for compliance with the information given by contract documents;

(C) approve or disapprove all change order requests and, subject to the provisions of Section 5.20 of this article, prepare all change orders;

(D) assemble all written guarantees required of the contractors;

(E) make periodic visits to the site of the project to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents, the amount of time that such on-site inspections shall entail to be determined by dividing the total compensation for professional services, exclusive of payments for detailed inspection, by 100 with the result being expressed as the number of hours to be devoted to on-site inspections, project conferences with the contractor and others, and travel to and from such inspections and conferences;

(F) make a written inspection report after each visit to the project and send a copy of such report to the contractor and to the commission;

(G) keep the commission informed of the progress of the work and endeavor to guard against defects and deficiencies in the work of contractors;

(H) determine periodically the amount owing to the contractors and recommend payment of such amounts to the commission, the recommendation to constitute a representation to the commission that, based upon observations and other pertinent data, the work has progressed to the point indicated and also to constitute a representation to the commission on the part of the architect/engineer that, to the best of his knowledge, information and belief, the quality of the work is in accordance with the plans, specifications, and contract documents; and

(I) conduct inspections to determine the dates of substantial and final completion and notify the commission and the using agency of findings in this respect.

(4) In the event that the commission requires full-time detailed inspection of the construction of a project, the architect/engineer shall select, subject to the commission's approval, the project construction inspector and shall be responsible for the proper administration of the duties enumerated under Subdivision (1) of this section. He shall pay the salary of the project construction inspector and shall be reimbursed for all such salary costs plus expenses of overhead directly applicable to such salary.

(5) Nothing in Subdivision (3) shall be construed as requiring the architect/engineer to assume responsibility for or to guarantee the complete adherence of the contractor to the plans and specifications and contract documents nor shall anything in Subdivision (3) be construed as requiring that the architect/engineer shall be liable for defects in construction.

(6) It is the responsibility of the architect/engineer to furnish the professional inspection of a project and when a private architect/engineer is employed, the fee paid such architect/engineer shall be deemed to cover professional inspection, provided, however, that such fee shall not be deemed to cover the additional cost of detailed inspection over and above the administrative duties specifically encompassed by Subdivision (4)

of this section. In projects where the commission's staff serves as architect/engineer, the commission shall be responsible for professional supervision and the cost of such supervision shall be a charge against the project.

Selection of architects/engineers

Sec. 5.22. (a) The commission shall establish and maintain a file of all qualified private architects/engineers who express an interest in state building construction projects. The file shall contain such information as the commission shall deem essential and desirable together with brochures and exhibits submitted by each private architect/engineer. Each private architect/engineer may submit additional brochures, exhibits, and information as he may deem necessary and that may be in accordance with his ethical practice in order that his file shall be current at all times. The files shall be open to the inspection of any using agency.

(b) Ultimate responsibility for the selection of a private architect/engineer employed for any project covered by the provisions of this article shall be vested in the commission. In recognition of the close working relationship which must exist between the architect/engineer and the using agency, the commission shall request the using agency to make recommendations regarding private architects/engineers and the using agency which desires to take advantage of such opportunity shall submit to the commission the names of three private architects/engineers designating its order of preference. The commission shall consider the using agency recommendations in order of preference and shall not reject such recommendations without good and sufficient reason set forth in writing to the using agency. In the event that the commission rejects all of the using agency recommendations, the using agency shall prepare and submit a new list.

(c) If the using agency does not choose to submit recommendations, it shall request the commission to proceed to select a private architect/engineer in accordance with the generally accepted standards for such selection and in conformity with the ethical standards of the professional societies of such architects/engineers.

Compensation of architects/engineers

Sec. 5.23. Private architects/engineers employed by the commission shall be compensated in accordance with the following provisions:

(1) the compensation for new projects and rehabilitation projects shall be established by the commission on the basis of studies of the compensation paid within the state by private clients for projects of comparable size and complexity, provided that such compensation shall not exceed the minimum recommended for similar projects by the Texas Society of Architects in instances where the private architect/engineer is an architect or the minimum recommended by the Texas Society of Professional Engineers in instances where the private architect/engineer is an engineer. The compensation established by the commission shall be deemed to cover all professional services to be rendered by the private architect/engineer including professional inspection as that term is defined in Section 5.21 of this article. On any project where the commission requires detailed inspection, as defined by Section 5.21 of this article, the compen-

sation shall be increased by the actual cost of providing such detailed inspection;

(2) the compensation for preparation of a project analysis as required by Section 5.16 of this article shall not exceed one percent of the estimated cost of construction. In the event the project is approved by the legislature in substantially the form originally requested and the same private architect/engineer is employed for the subsequent phases of design, the compensation paid under this subdivision shall be deducted from the compensation paid under the provisions of Subdivision (1) of this section; and

(3) the state shall furnish detailed information on space requirements and relationships and the justification for, use of, and general requirements to be met by the project. The state shall furnish a complete site survey and soil analysis.

Planning fund

Sec. 5.24. There is hereby created in the state treasury a special fund to be known as the State Building Construction Planning Fund which shall be used to make payments for engineering, architectural, and other planning expenses necessary to make a project analysis in accordance with the provisions of Section 5.16 of this article. The commission shall authorize all payments made from the planning fund. The payments shall be a first charge against the project for which they were drawn and the amount so paid shall be credited to and transferred to the planning fund at such time as the legislature may approve the project and appropriate funds for its construction.

Final inspection

Sec. 5.25. (a) The commission shall be responsible for directing final payment for work done on each project. If upon final inspection of any project it shall be found that the plans, specifications, contract, or change orders for the project shall not have been fully complied with, the commission shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment.

(b) The final inspection shall consist of an on-site inspection by the architect/engineer, a representative of the commission, a representative of the using agency, and a representative or representatives of the contractor or contractors. The final inspection shall be scheduled by the commission upon notification by the architect/engineer within 10 days after the architect/engineer has notified the commission that the contract has been performed according to the plans and specifications.

(c) Upon completion of the project the commission shall release the same to the using agency. The commission shall be responsible for making an inspection of the project prior to the expiration of the guarantee period to observe any defects which may appear within one year after completion of the contract. The commission shall give prompt written notice to the contractor of defects which are due to faulty materials and workmanship. Nothing in this subsection shall be construed as requiring the contractor to assume responsibility for or guarantee any defects other than those due to faulty materials or workmanship or failure on his part to adhere to the contract documents.

Uniform general conditions

Sec. 5.26. (a) The commission shall adopt and maintain a uniform set of general conditions to be incorporated into all building construction contracts executed by the State of Texas, including those pertaining to projects otherwise excluded from the provisions of this article by Section 5.13 but not including those excluded by Section 5.14 of this article.

(b) The commission shall cause the uniform general conditions of state building construction contracts to be reviewed whenever in its opinion such review is desirable, but in no event less frequently than once every five years. The review shall be made by a committee appointed by the commission consisting of the director of planning and construction who shall serve ex officio as chairman of the committee and who shall vote only in the event of a tie; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; two persons appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; and two persons appointed by the commission from a list of nominees submitted to it by the Chairman of the Executive Council of the Texas Associated General Contractors Chapters; and two persons appointed by the commission from the list of nominees submitted to it by the Executive Secretary of the Mechanical Contractors Associations of Texas, Incorporated. Members of any review committee appointed pursuant to this subsection shall serve without compensation but may be reimbursed for their necessary and actual expenses.

Energy conservation standards

Sec. 5.27. (a) In addition to the uniform set of general conditions provided for in Section 5.26 of this article, the commission shall adopt and publish energy conservation design standards that all new state buildings, including buildings of state-supported institutions of higher education, are required to meet. These standards shall include both performance and procedural standards for maximum energy conservation allowed by the latest and most effective technology consistent with the requirements of public health and safety regulations and economic considerations.

(b) The standards shall be promulgated in terms of energy consumption allotments and shall take into consideration the various classes of building uses. Performance standards shall allow for design flexibility since only the total allotment of energy is prescribed.

(c) Procedural standards shall be directed toward specific design and building practices that produce good thermal resistance and low air leakage and toward requiring practices in the design of mechanical and electrical systems which conserve energy. The procedural standards shall address, when applicable, the following items:

- (1) insulation;
- (2) lighting, according to the lighting necessary for the tasks for which each area is intended to be used;
- (3) ventilation;
- (4) the potential use of new systems for saving energy in ventilation, climate control, and other areas; and
- (5) any other item which the commission deems appropriate.

Energy conservation standards by other entities

Sec. 5.28. (a) The boards of regents and boards or governing bodies of state agencies, commissions, and institutions exempted by Section 5.13 of this article shall adopt and publish energy conservation design standards as provided in Section 5.27 of this article for all new buildings under their authority. The standards shall be consistent with those promulgated by the commission for other state buildings and be prepared in cooperation and consultation with the commission and the Governor's Energy Advisory Council.

(b) The commission shall assist the boards and governing bodies of state agencies, commissions, and institutions subject to the provisions of Subsection (a) of this section with the preparation of energy conservation standards by providing technical assistance and advice.

Model energy conservation codes

Sec. 5.29. The commission, after consultation with the Governor's Energy Advisory Council and the Texas Department of Community Affairs, shall prepare model energy conservation building codes and make them available for use by cities in enacting or amending their ordinances.

Energy conservation manual

Sec. 5.30. (a) The commission shall produce and publish an energy conservation manual for potential use by designers, builders, and contractors of residential and nonresidential buildings. The manual shall be furnished on request at a reasonable price sufficient to cover the costs of printing and help defray research costs in establishing design standards. The manual shall contain the following:

- (1) guidelines for energy conservation established by the commission;
- (2) forms, charts, tables, and other data to assist designers and builders in meeting the guidelines;
- (3) design suggestions for meeting or exceeding the guidelines; and
- (4) any other information which the commission finds will assist persons to become familiar with the latest technologies that they might use in meeting the guidelines.

(b) The manual shall be updated periodically as significant new energy conservation information becomes available.

Compilation of construction and maintenance information

Sec. 5.31. (a) For the purpose of providing the governor, the legislature, and the budget offices of the state with current information on the status of state-owned buildings, and for the purpose of obtaining up-to-date information on construction costs, the commission shall biennially obtain from all using agencies a list of all state-owned buildings showing the year of completion, the general type of construction, size, usage, and general condition of each. In addition the commission shall, for all buildings completed from and after the effective date of this Act, obtain from all using agencies data showing the total cost of the project and the cost of construction together with such data as may be necessary to enable a meaningful comparison to be made on the cost of buildings of like nature.

(b) For the purpose of obtaining up-to-date information on maintenance data, the commission shall obtain biennially from all using agencies information on the cost of heating, cooling, and maintaining all buildings owned by the state.

(c) The commission shall summarize its findings in a report to be made available to the governor, the legislature, and the budget offices of this state. All state agencies, departments, and institutions shall cooperate with the commission in providing the information necessary for said report.

ARTICLE 6. LEASE OF SPACE FOR STATE AGENCIES

Definitions

Sec. 6.01. In this article:

(1) "Commission" means the State Purchasing and General Services Commission.

(2) "State agency" means a board, a commission, a department, an office, or other agency of the state government.

Determinations and standards

Sec. 6.02. (a) When a state agency needs space to carry on its functions, the head of the agency or his or her designee shall submit a written request for the space to the commission.

(b) After consulting the state agency regarding the amount and type of space requested, the commission shall determine whether a need for the space exists and, if so, the specifications to be used in obtaining the space.

(c) The commission shall adopt standards regarding the uses of and the needs for space by state agencies and the types of space needed by state agencies.

Sharing space

Sec. 6.03. The commission may consolidate the requests for space of two or more state agencies with similar needs and obtain space and allocate space so that it can be shared by the agencies.

Preference for state-owned space

Sec. 6.04. In filling a request for space, the commission shall give a preference to available state-owned space.

Leasing space from other sources

Sec. 6.05. (a) When state-owned space is not available and a state agency has verified that it has sufficient funds available to cover a lease of space, the commission may lease space for the agency from another source according to the provisions of this section and the specifications submitted by the state agency.

(b) The space may be leased from another state agency through an interagency contract or from the federal government or a political subdivision, including a county, a municipality, a school district, a water or irrigation district, a hospital district, a council of government, or a regional planning council, through a negotiated contract.

(c) The space may be leased from a private source through competitive bidding whenever possible, but the commission, with the approval of the

state agency, may negotiate for the space when competition is not available.

(d) When competitive bidding is used, the commission shall take into consideration moving costs, the cost of time lost in moving, and other factors in determining the lowest and best bid.

The commission shall forward copies of all bids received to the leasing agency along with the commission's recommended award. If, after review of the bids and evaluation of all factors involved, the leasing agency determines that the bid selected by the commission is not in its opinion the lowest and best bid, it may file with the commission a written recommendation, complete with justification and full explanation of all factors considered in arriving at the recommendation, that the award be made to a bidder other than the commission's recommended bidder.

The commission shall give full consideration to the agency recommendation and if it does not agree with the agency recommendation, it shall notify the agency in writing. The agency and the commission shall attempt to reach an agreement on the award.

If agreement is not reached within 30 days, all bids and pertinent documents shall be transmitted to the governor who shall designate the bidder to which the award shall be made.

(e) In any contract entered into by the commission for the lease of space under this article, the State of Texas, acting through the commission, is the lessee.

(f) The provisions of the lease contract shall reflect the provisions contained in the invitation for bids, the successful bid, and the award of the contract.

(g) The lease contract may provide for an original term not to exceed 10 years and may include options to renew for as many terms, not to exceed 10 years each, that the commission considers to be in the state's best interest, and when the contract contains no option to renew, the lease may be renewed once according to the same provisions that were in the original contract for a term not to exceed one year, on agreement of the parties.

(h) A lease contract is contingent on the availability of funds appropriated by the legislature to cover the provisions of the lease.

(i) The obligation of the lessor to provide lease space and of the commission to accept the space becomes binding on the award of the contract.

(j) In leasing space for the use of state agencies, the commission shall give first consideration to any structures that have been designated Recorded Texas Historic Landmarks as provided by Section 12, Chapter 500, Acts of the 55th Legislature, Regular Session, 1957, as amended (Article 6145, Vernon's Texas Civil Statutes), or that have been listed in the National Register of Historic Places established by 16 U.S.C. Section 470a (1974), or that have been designated landmarks by the local governing authority, if the structure meets requirements and specifications and the cost is not substantially higher than other available structures that meet requirements and specifications.

Elimination of barriers to handicapped persons in state buildings

Sec. 6.06 The commission may not enter a lease contract under this article unless it complies with the provisions of Article 7 of this Act.

Remedial action against lessor

Sec. 6.07. When a state agency occupies lease space and is aware of circumstances concerning the space which require remedial action against the lessor, the agency shall notify the commission, and the commission may investigate the circumstances and the lessor's performance under the contract. When the commission requests the assistance of the attorney general in protecting the state's interest under a lease contract, the attorney general shall assist the commission.

Certification of funds

Sec. 6.08. At least 60 days before the beginning of each fiscal biennium during the term of a lease contract entered into under this article, the state agency occupying the leased space shall certify to the commission that funds are available to cover the lease.

Option to purchase

Sec. 6.09. When the commission considers it advisable, the commission may lease space for a state agency by a contract which contains an option for the commission to purchase the space subject to the legislature's appropriation of funds for the purchase. A lease contract containing the option shall show the amount that will be accumulated by the commission and credited toward the purchase at various periods during the term of the lease and the purchase price of the property at the beginning of each fiscal biennium during the term of the lease.

Records

Sec. 6.10. In order to efficiently maintain a space management system, the commission shall maintain records of the amount and cost of space under lease by the commission and may collect other information that it considers necessary. All state agencies shall cooperate with the commission in securing this information.

Exemptions

Sec. 6.11. The provisions of this article do not apply to the acquisition of district office space for members of either house of the legislature or space to be used by the Texas Employment Commission.

Rules

Sec. 6.12. The commission shall promulgate rules necessary to administer its functions under this article.

ARTICLE 7. ARCHITECTURAL BARRIERS**Policy**

Sec. 7.01. The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of handicapped or disabled citizens and to eliminate, insofar as possible, unnecessary barriers encountered by aged, handicapped, or disabled persons, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

Application

Sec. 7.02. (a) The standards and specifications adopted under this article shall apply to all buildings and facilities used by the public which are constructed in whole or in part by the use of state, county, or municipal funds, or the funds of any political subdivision of the state. To such extent as is not contraindicated by federal law or beyond the state's power of regulation, these standards shall also apply to buildings and facilities constructed in this state through partial or total use of federal funds. All buildings and facilities constructed in this state, or substantially renovated, modified, or altered, after the effective date of this article from any one of these funds or any combination thereof shall conform to each of the standards and specifications adopted under this article except where the governmental department, agency, or unit concerned shall determine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is impracticable. Where it is determined that full compliance with any particular standard or specification is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practicable, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(b) These standards and specifications shall be adhered to in those buildings and facilities under construction on the effective date of this article, unless the authority responsible for the construction shall determine that the construction has reached a state where compliance is impractical. This article shall apply to temporary or emergency construction as well as permanent buildings.

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by the state through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the commission. If it is determined that full compliance is not practical, there shall be substantial compliance with the standard or specification to the maximum extent practical, and the written record of the determination that it is impractical to comply fully with a particular standard or specification shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification.

(d) These standards and specifications shall be adhered to in certain privately financed buildings, building elements, and improved areas which are open to public use for education, employment, transportation, or acquisition of goods and services, and which are constructed on or after January 1, 1978, in counties with a population of 50,000 or more. Such facilities include the following:

(1) shopping centers which contain in excess of five separate mercantile establishments; compliance with accessibility standards and specifications relative to toilet rooms shall not apply unless the shopping center elects to have public toilet rooms;

(2) transportation terminals;

(3) theaters and auditoriums having a seating capacity for 200 or more patrons;

(4) hospitals and related medical facilities which provide direct medical service to patients;

(5) nursing homes and convalescent centers;

(6) buildings or complexes containing an aggregate total of 20,000 or more square feet of recognizable office floor space;

(7) funeral homes; and

(8) commercial business and trade schools or colleges.

Scope

Sec. 7.03. (a) This article is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, the physically handicapped to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Definitions

Sec. 7.04. For the purpose of this article the following terms have the meanings as herein set forth:

(1) "Nonambulatory disabilities" means impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs.

(2) "Semiambulatory disabilities" means impairments that cause individuals to walk with difficulty or insecurity. Individuals using braces or crutches, amputees, arthritics, spastics, and those with pulmonary and cardiac ills may be semiambulatory. The listing here made is illustrative and shall not be construed as being exhaustive.

(3) "Sight disabilities" means total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to danger.

(4) "Hearing disabilities" means deafness or hearing handicaps that might make an individual insecure in a public area because he is unable to communicate or hear warning signals.

(5) "Disabilities of coordination" means faulty coordination or palsy from brain, spinal, or peripheral nerve injury.

(6) "Aging" means those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination, and perceptiveness but are not accounted for in the aforementioned categories.

Responsibilities for enforcement

Sec. 7.05. (a) The responsibility for administration and enforcement of this article shall reside primarily in the commission, but the commission shall have the assistance of appropriate state rehabilitation agencies in carrying out its responsibilities under this article. State agencies involved in extending direct services to disabled or handicapped persons are authorized to enter into interagency contracts with the commission to provide such additional funding as might be required to insure that service objectives and responsibilities of such agencies are achieved through the administration of this article. In enforcing this article the commission shall also receive the assistance of all appropriate elective or appointive state officials. The commission shall from time to time inform professional organizations and others of this law and its application.

(b) The commission shall have all necessary powers to require compliance with its rules and regulations and modifications thereof and substitutions therefor, including powers to institute and prosecute proceedings in the district court to compel such compliance, and shall not be required to pay any entry or filing fee in connection with the institution of such proceedings. The commission or a handicapped person who seeks injunctive relief to obtain compliance with the rules and regulations shall first notify a person responsible for the building and allow that person 90 days to bring the building into compliance. The commission shall have the authority to extend the 90-day period when circumstances justify such extension.

(c) The commission is authorized to promulgate such rules and regulations as might reasonably be required to implement and enforce this article. The standards and specifications to be adopted by the commission under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the commission shall publish the standards and specifications in a readily accessible form for the use of interested parties.

(d) All plans and specifications for construction of buildings subject to the provisions of this article shall be submitted to the commission for review and approval prior to bidding and award of contract in accordance with rules and regulations adopted by the commission. Likewise, any substantial modification of approved plans shall be resubmitted to the commission for review and approval.

(e) The commission may review plans and specifications, make inspections, and issue certifications that privately owned structures are free of architectural barriers and in compliance with the provisions of this article. The commission is authorized to charge a fee, not to exceed \$100, for review of plans and specifications, inspection, and certification of each privately owned building or facility.

(f) With respect to buildings and facilities that are under the jurisdiction and control of The University of Texas Board of Regents, the responsibility for administration and enforcement of this article shall reside in such governing board, and in the discharge of such responsibility the governing board shall have the same responsibilities, duties, powers, and authority that are herein imposed on and delegated to the commission with respect to all other buildings and facilities covered by this article.

ARTICLE 8. PROPERTY ACCOUNTING

Property accounting system

Sec. 8.01. (a) All real and personal property belonging to the state shall be accounted for by the head of the agency which has possession of the property.

(b) The commission shall administer the property accounting system. The state auditor shall administer the property responsibility system. The commission shall issue rules and regulations and a manual of instruction and prescribe such records, reports, and forms necessary to accomplish the objects of this article subject to the approval of the state auditor. The state auditor is directed to cooperate with the commission in the exercise of the commission's rulemaking powers herein granted by giving technical assistance and advice.

(c) The commission shall maintain a complete and accurate set of centralized records of state property. Where the commission finds that an agency has demonstrated its ability and competence to maintain complete and accurate detailed records of the property it possesses without the detailed supervision by the commission, it may direct that the detailed records be kept at the principal office of such agency. Where the commission issues such order, it shall keep only summary records of the property of such agency and the agency shall keep such detailed records as the commission directs and furnish the commission with such reports at such times as directed by the commission.

(d) Each agency head shall cause each item of state property possessed by his agency to be marked so as to identify it. The agency head shall follow the instructions issued by the commission in marking state property.

Responsibility for property accounting

Sec. 8.02. (a) All state agencies shall comply with the provisions of this article and keep the property records required.

(b) All real property owned by the state shall be accounted for by the agency which possesses the property. The real property administered by the General Land Office shall be accounted for by that office and not by the system prescribed herein, and the real property administered by the permanent funds established by the legislature and people shall be accounted for by the agency now charged with its administration and not by the system prescribed herein.

(c) All personal property owned by the state shall be accounted for by the agency that possesses the property. The commission shall by regulation define what is meant by personal property for the purposes of this article, but such definition shall not include nonconsumable personal property having a value of \$250 or less per unit. In promulgating such regulations, the commission shall take into account the value of the property, its expected useful life, and if the cost of record keeping bears a reasonable relationship to the cost of the property on which records are kept. The commission shall consult with the state auditor in making such regulations and the auditor shall cooperate with the commission in the exercise of this rulemaking power by giving technical assistance and advice.

(d) All medical, surgical, and technical equipment and supplies provided by the Texas Department of Health to local public health units, local public health laboratories, state institutions, and nonprofit institutions, contributing to the promotion and maintenance of public health by the usage of such medical, surgical, and technical equipment and supplies shall be accounted for by that department and not by the system prescribed in this article. The Texas Department of Health shall maintain at all times a complete record of such medical, surgical, and technical equipment and supplies provided and such records shall be verified by the state auditor and available to the federal auditors for the agency of the federal government making such grants for assistance in the purchase of such medical, surgical, and technical equipment and supplies.

Property manager; property inventory

Sec. 8.03. (a) Each agency head is responsible for the proper custody, care, maintenance, and safekeeping of the state property possessed by his agency.

(b) Each agency head shall designate either himself or one of his employees as property manager. The commission shall be informed in writing by the agency head of the name of the property manager and shall be informed of any changes. Where the commission finds that convenience and efficiency will be served, it may permit more than one property manager to be appointed by the agency head.

(c) The property manager shall maintain the required records on all property possessed by the agency and shall be the custodian of all such property.

(d) No person shall entrust state property to any state official or employee or to anyone else to be used for other than state purposes.

(e) When an agency's property is entrusted to some person other than the property manager, the property manager shall require a written receipt for such property executed by the person receiving custody of the property. When the possession of property of one agency is entrusted to another agency on loan, such transfer shall be done only when authorized in writing by the agency head who is lending such property and the written receipt shall be executed by the agency head who is borrowing such property. The property manager is relieved of the responsibility for property which is the subject of such a receipt.

(f) Each agency shall make a complete physical inventory of all property in its possession once a year. The inventory shall be taken on the date prescribed for the agency by the commission.

(g) The agency head shall forward a signed statement describing the method by which the inventory was verified, along with a copy of such inventory, within 45 days after the inventory date for the agency.

(h) The commission shall supervise the property records of each agency so that the records accurately reflect the property currently possessed by the agency. The commission shall prescribe the methods whereby items of property are deleted from the property records of the agency. Property that has become surplus or obsolete and no longer serviceable and has been turned over to the commission for disposal under the laws relating thereto shall be deleted from the records of that agency upon the authorization of the commission. Property that is missing from the agency or property that is disposed of directly by the agency in a legal

manner shall be deleted from the commission's records upon the authorization of the state auditor.

Change of property managers

Sec. 8.04. When there is a change in agency heads or property managers, the incoming agency head or property manager shall execute a receipt for all agency property accounted for to the outgoing agency head or property manager. A copy of such receipt shall be delivered to the commission, the state auditor, and the outgoing agency head or property manager. No further warrants in favor of the outgoing agency head or property manager shall be drawn or paid until the state auditor has certified that the agency property has been properly accounted for. The state auditor may make this certification without requiring that a physical inventory be taken.

Liability for property loss

Sec. 8.05. Where agency property disappears, whether through theft or other cause, as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care for its safekeeping, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property deteriorates as a result of the failure of the agency head, property manager, or agency employee entrusted with the property in writing to exercise reasonable care to maintain and service the property, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. Where agency property is damaged or destroyed as a result of an intentional wrongful act or of a negligent act of any state official or employee, such person shall be pecuniarily liable to the state for the loss thus sustained by the state. The liability prescribed by this section may be found to attach to more than one person in a particular instance; in such cases, the liability shall be joint and several.

Reporting to state auditor

Sec. 8.06. When any state property has been lost, destroyed, or damaged through the negligence or fault of any state official or employee, the agency head responsible for such property shall immediately report such loss, destruction, or damage to the state auditor. Upon learning in any manner of such property loss, destruction, or damage, the state auditor shall investigate the matter. If the investigation discloses that an injury has been sustained by the state through the fault of a state official or employee, the state auditor shall make written demand upon such state official or employee for reimbursement to the state for the loss so sustained.

Legal action to recover monetary loss of property

Sec. 8.07. In case the demand made by the state auditor for reimbursement for property loss, destruction, or damage is refused or disregarded by the state official or employee upon whom such demand is made, the state auditor shall report the facts to the attorney general. If, after an investigation of the facts, the attorney general finds that legal liability may be adjudged against the state official or employee, he shall take such

legal action to recover the monetary loss of the state property occasioned by the loss, damage, or destruction as in his opinion may be deemed necessary. Venue for all such suits instituted against a state official or employee shall lie in the courts of appropriate jurisdiction of Travis County.

Failure to keep records

Sec. 8.08. When any agency fails to keep the records required under the provisions of this article or fails to take the annual physical inventory, the commission shall so inform the comptroller and the comptroller may refuse to draw any warrants on behalf of such agency.

Transfer of personal property

Sec. 8.09. (a) Any state agency is authorized to transfer any personal property of the state under its control or jurisdiction to any other state agency with or without reimbursement between the agencies; provided, however, that the provisions of this article shall not apply to any real property.

(b) When any personal property under the control or jurisdiction of one state agency is transferred to the control or jurisdiction of any other state agency, such transfers shall be immediately and simultaneously reported to the commission by the transferor and the transferee on forms prescribed by the commission, and it shall adjust the inventory records of the agencies involved in making the transfer. Whenever any transfer is made with reimbursement from funds deposited in the state treasury, the transferee shall issue a voucher payable to the transferor, and the comptroller of public accounts shall issue warrants for reimbursement.

Distribution of this article

Sec. 8.10. Each agency head shall distribute a copy of this article to each official and employee of his agency and shall give a copy to each new employee of the agency.

ARTICLE 9. SURPLUS AND SALVAGE PROPERTY

Sec. 9.01. As used in this article:

- (1) "Comptroller" means the comptroller of public accounts.
- (2) "Auditor" means the state auditor.
- (3) "Property" means personal property, and does not mean real property, or any interest in real property. Personal property affixed to real property may be sold under this law if its removal and disposition is to carry out a lawful objective under this law or any other law.
- (4) "Surplus property" means any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new but possesses some usefulness for the purpose for which it was intended or for some other purpose.
- (5) "Salvage property" means any personal property which through use, time, or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.
- (6) "Political subdivision" means a county, municipality, school district, or junior college district.

Establishment of procedures

Sec. 9.02. The commission shall establish and maintain procedures for the transfer, sale, or disposal of surplus and salvage property no longer needed by state agencies.

Mailing lists of political subdivisions

Sec. 9.03. The commission shall maintain a mailing list, renewable annually, of political subdivision purchasing agents or other officers performing similar functions who have asked for information on surplus or salvage equipment or material the state may have available.

Disposition of surplus or salvage property

Sec. 9.04. (a) All state agencies that determine they have surplus or salvage property shall inform the commission of the kind, number, location, condition, original cost or value, and date of acquisition of the property.

(b) When a state agency reports to the commission that it has surplus or salvage equipment or material, the commission shall inform other state agencies and political subdivisions of the existence, kind, number, location, and condition of the equipment or material.

(c) When notified of surplus or salvage property, a state agency may negotiate directly with the reporting state agency for an interagency transfer of the property at a mutually agreed upon value. If a transfer is made, the participating agencies shall report the transaction to the comptroller and the commission. The comptroller shall debit and credit the proper appropriations and the commission shall adjust the state inventory records if inventoried property is transferred.

(d) A political subdivision shall notify the commission within 30 days from the date of the notice if it desires to negotiate for surplus or salvage equipment or material.

(e) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice, and if the commission determines that the equipment or material will not satisfy a state need, the commission may authorize the sale or transfer of surplus or salvage equipment or material to any political subdivision which has expressed a desire to negotiate.

(f) The commission shall adopt rules and regulations to govern occasions when more than one political subdivision expresses a desire to negotiate for the same surplus or salvage equipment or material. The commission may adopt other necessary rules and regulations to govern the sale or transfer of surplus or salvage equipment and material to political subdivisions.

(g) If no state agency negotiates an interagency transfer of the equipment or material within 30 days from the date of the notice and no political subdivision has expressed a desire to negotiate, or if one or more political subdivisions has expressed a desire to negotiate but is unable to negotiate a sale or transfer of the equipment or material within 40 days from the date of the notice, the commission may offer the equipment or material to the organization known as the Texas Partners of the Alliance, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agen-

cy for International Development. The equipment or material shall be offered at its fair market value as determined by mutual agreement between the commission and the Texas Partners of the Alliance.

(h) If the Texas Partners of the Alliance do not accept the offer within 60 days, or if the commission and the Texas Partners of the Alliance cannot agree on the fair market value of the equipment or material, the commission shall sell or dispose of the equipment or material as otherwise provided by this article.

Alternative disposition of surplus or salvage property

Sec. 9.05. (a) If surplus or salvage property is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis.

(b) If the value of any property or lot of property to be sold is estimated to be over \$1,000, the sale shall be advertised at least one time in at least one newspaper of general circulation in the vicinity where the property is located by the commission or the state agency delegated authority to sell the property.

(c) When the commission sells any surplus or salvage property it shall report the item sold and the sale price to the agency that declared such property as surplus or salvage.

(d) All agencies for whom surplus or salvage property is sold or who sell surplus or salvage property under authorization of the commission shall report the sale together with the prices realized to the comptroller; and if the property is on the state inventory the commission shall remove it from the inventory.

(e) The proceeds from the sale of any surplus or salvage property less the cost of advertising the sale shall be deposited to the credit of the item of appropriation to the agency for whom the sale was made. A portion of the proceeds from the sale of any surplus or salvage property equal to the cost of advertising the sale shall be deposited in the state treasury to the credit of the item of appropriation to the commission from which such cost was expended.

Destruction of surplus or salvage property

Sec. 9.06. If the commission cannot sell or dispose of any property reported to it as surplus or salvage it may order the property destroyed as worthless salvage and report the destruction to the declaring agency. The destruction of salvage shall authorize the commission to remove reported property from the state inventory if on the state inventory. Authorization by the commission to delete salvage items not its own from the state inventory shall not be required. It is not the intention of this section to alter, enlarge, or amend the law providing for the deletion from inventory upon the authorization of the auditor of property that is missing from any agency.

Maximum return from disposition of surplus or salvage property

Sec. 9.07. The commission shall at all times try to realize the maximum return to the state in the sale and disposal of surplus and salvage property. It shall maintain a list of prospective buyers of surplus and

salvage property and it may in all cases reject any or all offers if it finds rejection to be in the best interests of the state. It shall cooperate with all state agencies in a continuing program of surplus and salvage property evaluation to minimize losses from accumulations and it shall cooperate at all times with the auditor in surplus and salvage property analysis.

Obtaining good title to surplus or salvage property

Sec. 9.08. Any purchaser of surplus or salvage property at a sale made by the commission or by any agency under authorization of the commission shall obtain good title to any property purchased if the purchaser has in good faith complied with the conditions of the sale and the applicable rules and regulations of the commission.

Rules, reports, forms

Sec. 9.09. The commission is authorized to promulgate rules and regulations and prescribe reports and forms necessary to accomplish the purposes of this article subject to the approval of the state auditor.

Disposition of property by legislature

Sec. 9.10. The provisions of this article do not apply to the disposition of surplus property by either house of the legislature pursuant to a system of disposition provided for in the rules and regulations of the administration committee of each house. If surplus property of either house is sold, proceeds of the sale shall be deposited in the state treasury to the credit of the expense fund of that house.

Purchase of legislative chairs

Sec. 9.11. A legislator may purchase the executive chair used by the legislator on the floor of the legislature if:

- (1) the legislator has not been reelected; and
- (2) the legislator pays into the state treasury the commission's estimate of the fair market value of replacement equipment.

This section does not limit a legislator's right to purchase state-owned equipment in any other manner.

Property used as trade-in

Sec. 9.12. A state agency may offer surplus or salvage property as a trade-in on new property of the same general type when such exchange is in the best interests of the state.

Exemption

Sec. 9.13. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof promulgated by the policy-making body of each agency or institution for the

guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article.

Authorization of agencies to dispose of property

Sec. 9.14. The commission may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the commission its ability to make such disposition under the rules and regulations set up by the commission, as provided for herein. State eleemosynary institutions and institutions and agencies of higher learning shall be excepted from the terms of this article.

Disposition of wastepaper

Sec. 9.15. The commission shall establish and maintain in each public building under its control facilities for collecting separately from all other wastes all the wastepaper disposed of in that building. The commission shall sell the wastepaper for recycling purposes to the highest bidder.

ARTICLE 10. TELECOMMUNICATIONS SERVICES

Definitions

Sec. 10.01. In this article:

(1) "Telecommunications services" means intercity communications facilities or services, provided that any dedicated circuits included as part of the consolidated system are considered to begin and end at the main connecting frame. "Telecommunications services" does not include single agency point-to-point radio systems or facilities or services of criminal justice information communication systems.

(2) "Consolidated telecommunications systems" means the network of telecommunications services serving the government of the State of Texas.

(3) "Centrex System" means the centralized telephone service utilized for the capitol complex in Austin.

System of telecommunications services

Sec. 10.02. (a) The commission shall plan, establish, and manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular telecommunications services requirements and the site at which the service shall be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that funds are appropriated or available for this purpose.

(c) The commission may negotiate rates and execute contracts with telecommunications service utilities for services, lease transmission facilities on a competitive bid basis if possible, and develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system.

(d) All contracts with telecommunications carriers shall contain the provision that the commission or any participating agency may obtain any data relating to the costs to the state of parallel tolls.

Policies and guidelines

Sec. 10.03. (a) In order to insure efficient utilization of telecommunications systems at minimum cost to the state, the commission shall promulgate and disseminate to all agencies appropriate policies, guidelines, operating procedures, and telephone directories.

(b) Each agency shall comply with the policies, guidelines, and operating procedures promulgated. The commission, with the advice of the state auditor, shall maintain records relating to the consolidated telecommunications system as necessary to enable the commission to analyze the cost effectiveness of the system to the state agencies, and shall advise the legislature at each session as to the cost effectiveness of the system. If, in the opinion of the commission, the total cost of the system reaches a level which would justify total state ownership and operation of the system, the commission shall recommend to the legislature the implementation of such action.

Balancing technological advancements and existing facilities

Sec. 10.04. In the planning, design, implementation, and operation of the telecommunications systems and facilities, the commission shall maintain an appropriate balance between the adoption of technological advancements and the efficient utilization of existing facilities and services in order to avoid misapplication of state funds and degradation or loss of the integrity of existing systems and facilities.

Sharing of services or facilities

Sec. 10.05. Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

Payment for services

Sec. 10.06. (a) The commission shall develop a system of billings and charges for services provided in operating and administering the consolidated telecommunications system, which allocates the total state cost to each entity serviced based on proportionate usage.

(b) The comptroller of public accounts shall establish in the state treasury a revolving account for the administration of this article. The account shall be used as a depository for funds received from entities served and as a source of funds to purchase, lease, or otherwise acquire services, supplies, and equipment, and to pay salaries, wages, and other costs directly attributable to the provisions and operations of the system.

(c) In order to provide an adequate cash flow as may be necessary for purposes of this article, using state agencies and other entities, upon proper notification, shall make monthly payments into the telecommunications revolving fund account from appropriated or other available funds. The legislature may appropriate funds for the operation of the system directly to the commission. In that case the revolving fund shall be used to receive funds due from local government entities and other agencies to the extent that their funds are not subject to legislative appropriation.

Contract with entities other than state agencies

Sec. 10.07. The commission may contract with each house of the legislature, legislative agencies, counties, cities, districts, and other political subdivisions and agencies not within the definition of "state agency," for utilization of the state telecommunications system.

Designated agent

Sec. 10.08. The commission is designated as the agency of this state responsible for obtaining telecommunications services.

Centrex system

Sec. 10.09. (a) The commission shall provide the centrex system for state agencies, each house of the legislature, and legislative agencies in the capitol complex and other state agencies which elect to subscribe to such service.

(b) Each using entity shall make monthly payments to the commission when assessed by the commission.

(c) Each using entity shall arrange for its telephone equipment directly with the supplying telephone company.

(d) The commission shall prepare and issue a revised centrex telephone directory in February of each year.

ARTICLE 11. MISCELLANEOUS PROVISIONS**Transfer of powers and duties; references**

Sec. 11.01. (a) All powers, duties, and functions granted or assigned to the State Board of Control by laws not repealed by this Act, other than powers, duties, and functions previously transferred to other agencies, are transferred to the commission.

(b) Any reference in the statutes to the State Board of Control means the State Purchasing and General Services Commission.

(c) Any reference in the statutes to The State Purchasing Act of 1957 means Article 3 of this Act

Messenger service

Sec. 11.02. (a) The commission shall operate a messenger service for handling unstamped written communications between state agencies, including the legislature and legislative agencies, located in Austin. All such agencies in the capital complex shall utilize the service, and other state agencies shall utilize the service to the maximum extent feasible.

(b) State warrants may be delivered upon agreement between the state comptroller, the commission, and the agency concerned.

(c) United States mail may be delivered to and from the post office located in the capitol complex on agreement of the commission and the agency concerned.

Business machine repair

Sec. 11.03. (a) The commission shall maintain a facility for the repair of office machines and shall offer the service to state agencies, including the legislature and legislative agencies, located in Austin.

(b) Using agencies shall make payment to the commission for repair services by vouchers prepared and submitted to the using agency by the commission.

(c) No privately-owned machines shall be serviced by the commission.

Central supply store

Sec. 11.04. (a) The commission shall operate a central supply store where state agencies, including the legislature and legislative agencies, can secure small supply items.

(b) The commission shall submit a purchase voucher to each using agency after the close of each month covering supply items purchased.

(c) Purchases from the central supply store may be made only by state agencies.

ARTICLE 98. AMENDMENTS

Sec. 98.01. Subsections (1) and (3), Section 1, Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes), are amended⁷⁵ to read as follows:

(1) "Consulting service" means the human service of studying or advising an agency under an independent contract. The term includes routine work provided to an agency under an independent contract that is necessary to the functioning of the agency's programs. The term includes only services for which payment is made from funds:

(A) that are appropriated by the legislature;

(B) that are generated by statutory functions of the agency; or

(C) that are received by the state from the federal government and that are awarded to the state without requiring the state to request the funds through a grant program.

(3) "State agency" means any state department, commission, board, office, institution, facility, or other agency, including a university system or an institution of higher education as defined in Section 61.003, Texas Education Code, as amended, other than a public junior college.

Sec. 98.02. Sections 2, 3, and 6, Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes), are amended⁷⁶ to read as follows:

Exemption

Sec. 2. This Act does not apply to employment of registered professional engineers or registered architects for architectural or engineering studies or for the design or construction of state facilities, private legal counsel, investment counselors, actuaries, or physicians, dentists, or other medical or dental services providers, and it is not intended to discourage their use.

Use and selection of private consultant

Sec. 3. (a) A state agency may use a private consultant only if:

(1) there is a substantial need for the consulting services; and

75. Vernon's Ann.Civ.St. art. 6252—11c, § 1. 76. Vernon's Ann.Civ.St. art. 6252—11c, §§ 2, 3, 6.

(2) the state agency cannot adequately perform the consulting services with its own personnel or through contract with another state agency.

(b) In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications, and on the reasonableness of the proposed fee for the services; and

(2) when other considerations are equal, give a preference to a private consultant whose principal place of business is within the state or who will manage the consulting engagement wholly from one of its offices within the state.

Publication in Texas Register

Sec. 6. (a) If it is reasonably foreseeable that a proposed use of a private consultant may involve a contract with a value in excess of \$10,000, a state agency or a regional council of government created under Chapter 570, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1011m, Vernon's Texas Civil Statutes), that proposes the use of a private consultant shall file, at least 40 days before contracting with a private consultant, the following information with the Secretary of State for publication in the Texas Register:

(1) a notice of invitation for offers of consulting services;

(2) the person who should be contacted by a private consultant who wants to make an offer;

(3) the closing date for receipt of offers of consulting services; and

(4) the procedure by which the agency or council of government will award the contract for consulting services.

(b) A state agency or regional council of government that complies with Subsection (a) of this section shall file within 10 days after contracting with the private consultant the following information with the Secretary of State for publication in the Texas Register:

(1) a description of the study that the private consultant is to conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the due dates of documents, films, recordings, or reports of intangible results that the private consultant is to present to the agency or council of government.

(c) The Texas State Library shall compile a list of documents, films, recordings, and reports of intangible results submitted to it under Section 5(b) of this Act and shall file the list in each quarter of the calendar year with the Secretary of State for publication in the Texas Register.

(d) If the consulting service desired by a state agency is a continuation of a service previously performed by a private consultant, the agency shall state this in the invitation for offers filed with the Secretary of State under Subsection (a) of this section. If the state agency intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted, it shall state this in the invitation for offers.

Sec. 98.03. Subsections (a) and (b), Section 5, Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes), are amended ⁷⁷ to read as follows:

(a) After a state agency contracts to use a private consultant, the state agency shall, upon request, supply the Legislative Budget Board and the Governor's Budget and Planning Office with copies of all documents, films, recordings, or reports of intangible results of the consultant service that are developed by the private consultant.

(b) Copies of all documents, films, recordings, or reports of intangible results shall be filed with the Texas State Library and shall be retained by the library at least five years after receipt.

Sec. 98.04. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes), is amended by adding ⁷⁸ Sections 6A through 6D to read as follows:

Conflicts of interest

Sec. 6A. An officer or employee of a state agency who has a financial interest in a firm or corporation that is a private consultant and that submits an offer to provide consulting services to the agency or who is related within the second degree by consanguinity or affinity to a person having the financial interest shall report the financial interest to the executive head of the state agency not later than the 10th day after the day on which the private consultant submits the consulting services offer.

Restriction on former employees of a state agency

Sec. 6B. A person who offers to perform a consulting service for a state agency and who has been employed by the agency or by another state agency at any time during the two years preceding the making of the offer shall disclose in the offer the nature of the previous employment with the agency or the other state agency, the date of termination of the employment, and the annual rate of compensation for the employment at the time of its termination. A state agency that accepts the offer shall include in the information filed under Subsection (b) of Section 6 of this Act a statement about the previous employment and the nature of the employment.

Contract void

Sec. 6C. (a) If a state agency contracts to use a private consultant without complying with the requirements of Section 6 of this Act or if a person contracts to perform a consulting service for a state agency without complying with the requirements of Section 6B of this Act, the contract is void.

(b) If a contract is void under this section, the comptroller or a state agency may not make any payments under the contract from any state or federal funds held in or outside the State Treasury.

Legislative intent

Sec. 6D. (a) It is the intent of the legislature that this Act be interpreted in a manner that assures the greatest fair competition in the selec-

77. Vernon's Ann.Civ.St. art. 6252—11c, § 5.
subsecs. (a), (b)

78. Vernon's Ann.Civ.St. art. 6252—11c, §§
6A to 6D

tion by state agencies and regional councils of government of private consultants under contracts covered by this Act and that assures that all potential providers of consulting services are afforded notice of the need for and opportunity to provide the services.

(b) This Act is not intended to discourage the use by state agencies or regional councils of government of private consultants if their use may reasonably be expected to result in a more efficient and less costly operation or project. This Act is not intended to prohibit the letting of a sole-source contract for consulting services if no proposal is received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after the procedures set forth in this Act have been followed.

ARTICLE 99. FINAL PROVISIONS

Board abolished

Sec. 99.01. The State Board of Control is abolished.

Transfer of personnel, property, etc.

Sec. 99.02. All personnel, records, and property of the State Board of Control are transferred to the State Purchasing and General Services Commission.

Initial appointments to commission

Sec. 99.03. In making the initial appointments to the commission, the governor shall designate one member for a term expiring January 31, 1981, one for a term expiring January 31, 1983, and one for a term expiring January 31, 1985.

Application

Sec. 99.04. Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252—11c, Vernon's Texas Civil Statutes), as amended by this Act, does not apply to any contract that a state agency entered or renewed before the effective date of this Act. A contract entered or renewed before the effective date of this Act is governed by Chapter 454, Acts of the 65th Legislature, Regular Session, 1977, as it existed when the contract was entered or renewed, and that law is continued in effect for this purpose as if this Act were not in force.

Repealer

Sec. 99.05. The following articles and acts, as compiled in Vernon's Texas Civil Statutes, are repealed: 79 601, 601a, 602, 606, 606a, 630, 630a, 630b, 630c, 634—½, 634a—1, 635, 655, 657, 658, 658a, 664—1, 664—2, 664—3, 665, 665a, 665b, 666, 666a, 666a—2, 666b, 667, 668, 669, 673, 674, 675, 676, 678, 678b, 678c, 678e, 678e—1, 678e—2, 678f, 678f—1, 678g, 678h, 678i, 678m, 678m.1, 678m—1, 678m—2, 678m—3, 678m—4, 678m—5, 688, 688a, 689, 689a, 690—695, 6252—6, and 6252—6a.

79. Vernon's Ann.Civ.St. arts. 601, 601a, 602, 606, 606a, 630 to 630c, 634½, 634a—1, 635, 655, 657 to 658a, 664—1 to 664—3, 665 to 666, 666a, 666a—2 to 669, 673 to 678, 678,

678b, 678c, 678e to 678i, 678m to 678m—2, 678m—3 to 678m—5, 688 to 689a, 690 to 695, 6252—6, 6252—6a, repealed

Effective date

Sec. 99.06. This Act takes effect September 1, 1979.

Emergency

Sec. 99.07. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1979, by a non-record vote; House concurred in Senate amendments to H. B. No. 1673 on May 26, 1979, by a non-record vote; House adopted H. C. R. No. 226 authorizing certain corrections in H. B. No. 1673 on May 26, 1979; passed by the Senate, as amended, on May 25, 1979, by a viva-voce vote; Senate adopted H. C. R. No. 226 authorizing certain corrections in H. B. No. 1673 on May 26, 1979.

Approved June 13, 1979.

Effective Sept. 1, 1979.

REPRESENTATIVE DISTRICTS 32C AND 32D**CHAPTER 774****H. B. No. 1704**

An Act relating to the boundaries of state representative districts 32C and 32D.

Be it enacted by the Legislature of the State of Texas:

Section 1. Representative districts 32C and 32D shall be composed of the following defined areas and each shall be entitled to elect one representative:

32C. That part of Tarrant County included in census tracts 14.01, 14.02, 14.03, 65.01, 65.02, 65.03, 65.04, 132.02, 133.01, 133.02, 138, 216.01, 216.03, 225; that part of census tract 13 not included in block tracts 303, 307, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, and 320; that part of census tract 65.05 not included in block tracts 101, 103, 107, and 109; that part of census tract 134.02 included in block tracts 601, 622, and 624; that part of census tract 216.02 not included in block group 2; and that part of census tract 115.01 not included in district 32D.

32D. That part of Tarrant County included in census tracts 115.02, 130, 131, 217.01, 217.02, 218, 219, 220, 221, 222, 223, 224, 226, 227, 228, and 229; that part of census tract 115.01 included in block group 2 except block tracts 201 through 210, block group 3 except block tracts 316 through 326, and block tracts 907, 908, and 909; and that part of census tract 216.02 not included in district 32C.

Sec. 2. This Act shall become effective for the elections, primary and general, for all representatives from the places herein specified and

80. Vernon's Ann.Civ.St. art. 195a—6, § 1.
2.